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ABSTRACT

This report, 1 in a series of 10, contains the results of research on the law, literature, and interstate compacts pertinent to out-of-state placement of children. The report is organized into six chapters. Following an overview of the study in chapter 1, a synthesis of articles, books, and news stories in chapter 2 provides a historical perspective on out-of-state home care and changes in public attitude about out-of-state placement of children. Chapter 3 investigates the constitutionality of interstate placements and the legal authority of state laws for interstate placements. Chapter 4 describes the substantive and procedural elements of each of the three interstate compacts relating to the movement of children across state lines. In chapter 5, information on the case studies drawn during the project is provided, including why the case-study states were selected, the organization of services in each agency studied, and a summary of key findings and recommendations. Out-of-state placement policies, practices, and issues are also summarized, and pros and cons of current policies are examined. The final chapter draws together all major findings of this research on the out-of-state placement of children. It also summarizes the contents of the third volume produced by the study, which consists of policy essays commissioned by national studies within the overall project. (KC)

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MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING

The Out-of-State Placement of Children: A Search for Rights, Boundaries, Services

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1982

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PREFACE

With the publication of this volume, the first systematic assessment of out-of-state child placement practices in America has been completed. It has not been easy. Data collection alone required contacts with over 20,000 public agencies. Hundreds of hours of library research were required to analyze the literature and relevant interstate compacts, and to record the state laws that bear upon the topic. Intensive on-site interviews in over 20 cities formed the bases for the seven statewide case studies found in the last appendix of this volume. Dozens of people worked on the staff, at one time or another, to ensure the satisfactory completion of the work. Now, it is finished.

This volume, A Search for Rights, Boundaries, Services, must be viewed not only in the context of the Project MIJJIT family of publications but, more important, as the third and final part of the interstate placement study. In addition to the material presented in the pages that follow, the reader should obtain the compendium of statistical and statutory data found in the companion volumes (The Out-of-State Placement of Children: A National Survey). Also available are a series of essays on the topic, commissioned by the Academy and appearing in the MIJJIT publication entitled Readings in Public Policy.

We believe that when the Congress specified, in Section 243(5) of the JJDPA, its interest in knowing more about out-of-state placements of children, this was the type and scope of research intended. Through the generous support of the National Institute of Juvenile Justice and Delinquency Prevention, virtually all the relevant information extant in the country has been accumulated in a single set of reports. It is, in a very real sense, a special census, combined with a legal analysis and an intensive examination of actual practices of state and local officials. Seldom are researchers given the opportunity to perform such a complete service.

During the next years of this decade, I imagine we can expect to witness a growing and more strident dialogue to emerge, one that will surely affect out-of-state placement practices. The confrontation will have little resemblance to the ones we came to know in the 1960s, despite the vague similarity of issues. On the one side will be advocates for less public intervention, less public expenditure and greater reliance upon families working out their own problems. On the other side will be advocates for providing services to children, removing them from unwholesome home environments, and generally using the power of the state to provide better opportunities for social development. The poignancy of this struggle will be heightened as the ravages of inflation and recession are felt by more families whose economic circumstances are already marginal. Depending on how public policies resolve the issues raised by the debate, we will either see fewer children removed from their homes by public agencies or a continued refinement of the current policies that have evolved over the past half-century. The prices we pay can be seen in either the acceptance of the possibility that larger numbers of children may be living wretched and desperate lives at home with their parents, or the costs of these types of social services will continue to absorb increasingly scarce public dollars.

This report, I believe, could contribute to removing some of the hyperbole from the discussion. We now know the extent of the problem, the characteristics of the affected children, the reasons motivating public officials, and the legal and administrative restraints imposed upon this particular practice. We also know more about the abuses of out-of-state placements, and the ways in which public officials have either responded effectively or found themselves powerless. It appears, then, that the debate can proceed with advocates for either position arguing with substantially better information. If better informed public officials do, in fact, make better public policies, then I am satisfied that we have made a significant contribution to progress.

November 1981

Joseph L. White
Project Director

ACKNOWLEDGMENTS

A great deal of gratitude is owed to the numerous individuals who helped make the report possible. We are especially thankful for the cooperation and assistance received from the many state and local officials who, despite the normal pressures of their duties, devoted valuable time and resources to answering our questions and assisting our research. In particular, we would like to acknowledge our appreciation for the significant contributions made by those officials interviewed in the seven states selected for in-depth field research. We sincerely hope that this report serves their interests and is of some value to their colleagues in other states.

Several other persons and organizations aided our research. Jan McMonigle, Peggy Johnson, and Polly Champ offered valuable suggestions for improving an early draft of the chapter on interstate compacts. In addition, Bruce Gross and Mary Lee Allen were extremely helpful in guiding our research and increasing our understanding of contemporary issues with the administration of interstate compacts and the out-of-home care of children.

PROJECT MIJJIT ADVISORY COMMITTEE

We are very much indebted to the individuals who served as an Advisory Committee to this Project, and to their respective organizations which made their participation possible. Individually and as a group, the Advisory Committee members acquitted themselves with distinction. The meetings were frequent and intensive; the reading material was both technical and voluminous. Through it all, they perservered, motivated by their concerns for children and by their own personal standards. Through this introduction, their contribution to the production of this volume is gratefully acknowledged.

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CHAPTER 1

CHAPTER 1

INTRODUCTION

How many children are placed in out-of-state residential settings with the assistance of public agencies? What are the characteristics of the children placed? Why do agencies arrange such placements and how much does it cost? To what extent are there differences in the rate of out-of-state placement among the various states, counties, and types of youth-serving agencies? Have policies associated with the out-of-state placement of children been affected by developments in the field of services for children? What are the legal bases and mechanisms for placing children out of state? How do relevant bureaucratic policies and procedures, and contemporary principles of child care operate within this legal environment? What is the nature of state policies developed to regulate out-of-state placements? To what extent has the enactment and utilization of interstate compacts for the placement of children been accomplished? What factors are associated with variations in regulatory effectiveness and compact utilization?

A systematic investigation into these and other questions concerning out-of-state placement policies and practices was started by the Academy for Contemporary Problems in 1978.[1] In conjunction with the Council of State Governments, the Academy conducted a preliminary study to test the feasibility of a national inquiry. A methodology was designed for a national study based upon conclusions reached from both the research into substantive issues related to the practice in three states, and from the availability of data that was pertinent to those issues. The national study was designed and undertaken in 1979. It primarily consisted of a national survey, an extensive search of relevant literature and law, and intensive case study of seven selective states.

This is the second of two reports prepared by the Academy from the results of the national study. The first report, entitled The Out-of-State Placement of Children: A National Survey, is largely quantitative.[2] Findings are reported for over 20,000 state and local public agencies that are responsible for child welfare, education, juvenile justice, mental health, and mental retardation services. In addition to documenting the incidence of out-of-state placements from these agencies, the first report also provides information about the types of children placed and the settings receiving them, reasons for placement, monitoring practices, and costs associated with out-of-state placement. These findings are reported in an aggregate fashion for a national overview. Additionally, each state is profiled, and a display of the incidence of out-of-state placements is reported within each county.

This report contains the results of research into the law and literature and interstate compacts pertinent to out-of-state placements, as well as the results of field investigations which focused on the policies and practices of seven states. Each of these avenues of inquiry yielded information which is valuable in itself. There exists no known documentation of law and literature related to out-of-state placement as is found in this report. This information responds to the needs of the practitioner, advocate, policymaker, and academician by providing references and explanations, previously unavailable, for understanding and testing the out-of-state placement phenomena. For many persons intimately involved in the out-of-state placement of children, this will be their first exposure, for example, to the historical antecedents of the current practices, or to the constitutional setting for the practice which has developed over recent times. Similarly, field investigations provide an informative look into the continuing struggles of concerned individuals to come to terms with this issue in seven states. Some of the field investigations occurred in states where landmark reforms were undertaken, some where significant or especially unique change has occurred, and others where the issue is just reaching the foreground of public attention. All of these studies document the policies and practices of the states' child care systems with regard to out-of-state placement and offer recommendations for change put forth by people closely involved with the issue.

In a larger way, the legal, archival, and qualitative field studies constitute important counterpoints to each other and to the national survey. Despite their intrinsic value, none of the sources of information or methodologies, by itself, is significant to provide a comprehensive picture of a complex social phenomenon such as the out-of-state placement of children. More than one approach was required to fully expose this issue to thorough public scrutiny. The field investigations, for example, provide important information on the bureaucratic settings and dynamics which was unavailable to the national survey. In another way, the legal and compact research and the background provided by the review of literature establish a historical and legal context for the events observed in the empirical portions of the study. In a way, then, each point of inquiry complements the others, and serves to illuminate the informational shadows cast by the individual approaches. The weakness of one methodology to gather important information is compensated for by the strengths of the others.

A summary of each chapter follows, including a brief description of the research which produced the findings that are discussed.

LITERATURE ON INTERSTATE PLACEMENT

A search of the literature on out-of-home care discovered extensive and controversial treatment of the topic. In Chapter 2, a synthesis of articles, books, and news stories provides a historical perspective on out-of-home care and changes in public concern about the practice are traced over time. Pointed arguments for and against the practice are identified and discussed. Literature on the more-focused issue of out-of-state placement is less replete than for the general topic of out-of-home care. Chapter 2 discusses the available information from an historical point of view, treating out-of-state placement as a special case of out-of-home care.

LAW OF INTERSTATE PLACEMENT

Chapter 3 investigates the constitutionality of interstate placements and the legal authority in state law for interstate placements. In this way, the legal mechanisms used to affect out-of-state placements are drawn out and discussed. The chapter also describes the fundamental aspects of state law relevant to different public agencies' authority or lack of authority to place children out of state. This includes a discussion of, for example, judicial authority and the authority of education agencies to make out-of-state placements. The relationship of licensing law and other regulatory statutes to out-of-state placement is also examined. There is a very mixed legal setting for out-of-state placement which varies by level of government, state, branch of government, and type of public agency. Every effort has been made to clarify this setting in understandable terms so that the importance of this information is available to the widest of readerships.

INTERSTATE COMPACTS

Interstate compacts are the most pervasive and uniform legislative policy relating to the movement of children across state lines in the nation. They assure unique protections to children placed out of state by providing systematic channels for examining the receiving setting, clarifying responsibilities while children are in transit, and preserving the ultimate responsibility of the sending agency for the well-being of children. Most important, they exist as officially maintained channels through which children may be legally returned to their state of residence should the need arise. Compacts relevant to the movement of children across state lines are the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health.

Chapter 4 describes the substantive and procedural elements of each of the three compacts, highlighting their respective purviews and explaining their objectives within those parameters. The construction and constitutional basis for these agreements are discussed and gaps in protection for certain types of placement are identified, together with efforts to ensure complete protection. Some observations and comparisons are also made about the success with which compacts are implemented in relation to their objectives and intent, and factors associated with thorough as well as incomplete implementation are noted.

CASE STUDY SUMMARIES

Aside from the national survey, the case studies constitute the largest piece of original research on the out-of-state placement of children undertaken by the Academy. Questions of public agency policies and practices were addressed by over 230 officials in 33 towns and cities throughout Alaska, California, Louisiana, Michigan, New York, New Jersey, and Virginia. State and local government officials and a variety of other respondents discussed with visiting research teams prevailing policies, the quality of and impediments to their implementation, and recommendations for change. Printed documents and current and proposed regulations and legislation were also gathered.

Chapter 5 first describes the reason why these case study states were selected. The organization of services in each agency studied is provided and a summary of key findings and recommendations is made for each state. Out-of-state placement policies, practices, and issues are also summarized for each of the four types of agencies studied across the states, and the pros and cons contained in current policy dilemmas are examined.

CONCLUSIONS AND RECOMMENDATIONS

The final chapter draws together, in concise form and in one location, all major findings of the Academy's research on the out-of-state placement of children. Summarizing the research in this way allows for a general characterization of relevant policies, compact utilization, state practices, and policy perspectives as put forth in specially commissioned essays. The chapter gives a series of recommendations which should be considered for policy change and development.

In summarizing major findings of the study, Chapter 6 provides a general characterization of out-of-state placement policies culled from the state profiles in the first report. Compact implementation is addressed in terms of administrative factors and obstacles to thorough implementation. In addition, some comments are offered about the availability of information from public agencies on the phenomenon. The implications these findings hold for policy development are drawn out, and recommendations for improving the existing system and for the thrust of future research are made.

Chapter 6 also summarizes the contents of the third volume produced by the Academy addressing the out-of-state placement of children. This publication is entitled Major Issues in Juvenile Justice Information and Training: Readings in Public Policy.[3] It contains policy essays commissioned by three national studies within the overall project, which are the Out-of-State Placement of Children, Youth in Adult Courts, and Services to Children in Juvenile Courts.

This study commissioned persons with specific expertise in out-of-state placement to write eight policy essays on the subject. The authors are characterized by exemplary experience and leadership in the field of child welfare administration, children's law, child advocacy, interstate compact administration, and child care licensing.

The essays address a number of issues relevant to the placement of children out of state, including the rights of children, alternative approaches to regulation, and the context within which out-of-state placements occur. Arguments for change represent divergent points of view, with some advocating the effectiveness and pursuit of litigation while others speak to improvement within existing bureaucratic structures. The essays bring contemporary controversies over out-of-state placement into the open in a way that is unprecedented--by providing a forum for different points of view about how change might best occur. However, despite differences in proposed avenues for improving policies and practices for placing children out of state, the prescriptions of these authors all have common objectives; that is, they would all tend to move the child placement system toward the provision of appropriate and least restrictive care, and toward improved regulation and compact utilization.

APPENDIXES

Auxiliary to the body of this report are a number of appendixes. They are bound as a separate volume; information on ordering it appears on the inside back cover.

A through C provide the statutory citations and official texts of the three interstate compacts discussed in Chapter 4. Appendixes D through J contain statutory citations for empowering legislation discussed in Chapter 3. Child import/export, long arm, and facility licensing citations are listed, by state, as are those statutes establishing placement authority of courts and specific state agencies. Appendix K includes the full case study notes for each of the seven states that were studied. The notes describe the states and acknowledge each contributor to the respective studies. The larger portion of the notes describe each state's out-of-state placement policies and practices, important issues, and conclusions and recommendations put forth by the respondents. This appendix contains findings in greater detail than Chapter 5, and it should be consulted for finer points of policy, practice, and recommendations for change.

FOOTNOTES

1. The Council of State Governments, The Interstate Placement of Children: A Preliminary Report (Lexington, Ky.: 1978).

2. The Academy for Contemporary Problems, The Out-of-State Placement of Children: A National Survey (Columbus, Ohio: 1981).

3. The Academy for Contemporary Problems, Major Issues in Juvenile Justice Information and Training: Readings in Public Policy (Columbus, Ohio: 1981).

CHAPTER 2

CHAPTER 2

LITERATURE ON INTERSTATE PLACEMENT

The literature on the out-of-home placement of children is extensive. Many articles, books, and news stories have been published over the last century on the subject. Some authors are critical of the practice, pointing to its alleged overuse and its destructive impact on family relationships and the children placed. Other writers strenuously defend the practice as being humanitarian, citing the deleterious effect on children of leaving them in certain home environments. Still others have focused upon the need for improving the quality of care in out-of-home placements, bypassing the more fundamental question concerning their appropriateness.

Although the literature on the more general practice of out-of-home care is extensive, no distinct body of published information has developed around the narrower subject of placing children out of state until very recently. The subject was first discussed in the late 1800s, but little has been done with it in the intervening years. The next few pages are devoted to a review of the major treatment given the subject, using an historical perspective. Changes in public concerns and issues are given special attention.

PRE-TWENTIETH CENTURY LITERATURE

H. H. Hart attributes the beginning of the child-placing movement in America to Charles Loring Brace, who in 1853 formed the New York Children's Aid Society. Brace, according to Hart, contended that institutional care was unnecessary for healthy, normal children, except for very brief periods.[1] He took children from the streets of New York and sent them to farm and village homes across the country to prevent their institutionalization. Miriam Langsam has suggested that this "placing-out" system evolved from European philosophies about emigration and indenture. In addition, the ethics surrounding education, religion, and work acted to form the foundation of placing-out as a means of preventing crime and delinquency. Circulars were sent to churches, farmers, merchants, and industrialists soliciting "good Christian homes in the country" for dependent and neglected children. The idea of labor in exchange for room, board, religious instruction, and education was commonly accepted as excellent arrangements during that period of America's history.[2] Hart recalls seeing the distribution of a group of these children to an Ohio farming village about 1862 and a similar distribution to a farming village in Minnesota about 1882.[3] Clearly, the work of the New York Children's Aid Society resulted in the wholesale dispersion of New York City children throughout the midwest. Similar societies were subsequently formed in other cities and the practice of placing-out became widespread.

Hart reported that the practice of placing-out was controversial for various reasons, but the placing of children in homes far away in other states was a special point of criticism. Several reports on the out-of-state placement issue were published in that era with rather colorful though descriptive titles, such as The Shady Side of the Placing Out System (Lyman Alden, 1885), The Removal of Children from Almshouses (Homer Folks, 1894), and Placing Out Children: Dangers of Careless Methods (Robert Hedderd, 1899).[4] The major allegations were that children were being placed without adequate home investigation and without subsequent supervision. Hart reported that:

> all these (children's aid) societies in their early days received children with insufficient investigation. Children of unmarried mothers were received with little hesitation. Societies placed children in homes of which they had very limited knowledge. The supervision after the children were placed was inadequate.[5]

Although these defects were inherent in the placing-out system itself, one can easily recognize why placing children in distant states would be particularly onerous to critics of the system. Other criticisms were focused on the involuntary character of the practice and its similarity to indentured servitude. Opposition was also heard from sectarian groups claiming the practice was a Protestant method of proselytizing Catholic children.

Hart conducted his own inquiry into the practice while he was secretary of the Minnesota State Board of Corrections and Charities. He investigated charges "in various parts of the West and South" that the New York Children's Aid Society was responsible for the mistreatment of thousands of children. He specifically noted the following allegations:

> that many vicious and depraved children are sent out by the Society; that they are hastily placed in homes without proper inquiry, and are often ill-used; that the Society, having disposed of the children, leaves them to shift for themselves without further care; and that a large proportion turn out badly, swelling the ranks of pauperism and crime.[6]

Hart reported the results of his study at the 1884 meeting of the National Conference of Charities and Corrections, observing that "it did not appear that any comprehensive inquiry had ever been made into the history of the children sent to any one state (at least, of late years)."[7] Hart's study apparently was the first ever done on the interstate placement of children in America.

Hart essentially found that "vicious and depraved" children were not being intentionally placed-out in Minnesota. There were cases of child abuse, but such cases had been prosecuted and the children transferred. Many abuse stories were unfounded or proven false. He did find that there had been hasty placement of many children without proper investigation. Some children had been placed with very poor families who could not even clothe or feed their own children. The motive for accepting these children was to secure their

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labor and, if available, the meager stipend for their room and board. Supervision was also inadequate. Most children "stayed put," but the more "restless and intractable" ones simply drifted off and no one seemed to know where they had gone.

It was Hart's contention that the most significant report to be issued in the 1800s on the practice of placing-out came after 24 years of debate waged in the National Conference of Charities and Corrections between the advocates of institutional care for dependent children and the advocates of the placing-out system.[8] He reports that in the conference of 1898, indications of agreement in favor of placing-out emerged. At the 1899 conference, Thomas M. Mulry, president of the St. Vincent dePaul Society of New York, presented a report from the Conference Committee on the Care of Neglected and Destitute Children, which Hart regarded to be the final word on this issue.[9] The 1899 report of the National Conference Committee was considered by Hart to be the most important contribution to the literature on the subject prior to 1900.

Paralleling the expansion of children's aid societies and the increasing use of placing-out was the development of what are known as "import-export" statutes, the precursor to 20th century attempts at regulating the interstate placement of children. In her review of impediments to interstate adoption, Roberta Hunt discusses the origin of these import-export statutes. Hunt states that the idea underlying this type of legislation was to prevent or restrict nonresident children from being sent or brought into a state for purposes of foster care or adoption.[10] She contends that this was partly to protect the state against casual and undesirable placements by persons of another state. It was also to protect the state from the possibility of having to assume responsibility for support of a nonresident child.[11] Since a state cannot directly regulate the activities of child-placing agencies located in another state, protective legislation of this type was seen as the only legal recourse available.[12]

Hunt writes that in 1877 Michigan was one of the first to attempt to restrict the placement of children from other states. Amending its law in 1895, Michigan required that any person, society, or asylum placing children from other states file a bond with the probate judge of the county for each child brought in. Illinois, Indiana, and Minnesota passed similarly restrictive importation laws in 1899, but in these states administrative responsibility was placed with state welfare authorities.[13]

THE NEXT FIFTY YEARS (1900 TO 1950)

The removal of children from their homes for humanitarian purposes had become a common, accepted practice by the year 1900. Nearly 50 years had passed since the practice was formally organized and promoted by Charles L. Brace. While many children were being placed near their homes, apparently a sizeable number were placed in boarding homes in other states. A "Bureau for the Exchange of Information" had been formed on a voluntary basis by a group of child-placing agencies to facilitate the care and supervision of placed-out children whose foster parents might move from one state to another. The bureau grew to include 68 child-placing agencies.[14] In 1921, the bureau was reorganized as the Child Welfare League of America and became a leader for the improvement of child placement throughout the United States. There is little indication in the literature, however, that the practice of placing children in boarding or foster homes out of state was being seriously challenged by anyone at that time.

The volume of literature on child placement grew at a rapid pace as social workers and others searched for standards by which to guide and improve the out-of-home placement of children. However, interstate placement rarely surfaced as a matter of special concern. The literature of this period continues to affirm a preference for home placement over institutionalization, and stresses the importance of investigation and supervision of children placed out of home. For example, in the published proceedings of the first White House Conference on the Care of Dependent Children convened in January 1909, the following statements appear which reflect the consensus of that era:

> Home life is the highest and finest product of civilization. Children should not be deprived of it except for urgent and compelling reasons . . . .
>
> As for children who for sufficient reasons must be removed from their own homes, or who have no homes, it is desirable that, if normal in mind and body and not requiring special training, they should be cared for in families whenever practicable. Such (foster) homes should be selected by a most careful process of investigation, carried on by skilled agents through personal investigation and with due regard to the religious faith of the child. After children are placed in homes, adequate visitation, with careful consideration of the physical, mental, moral, and spiritual training and development of each child on the part of the responsible home-finding agency is essential.[15]

Notions of quality of care at that time did not seem to include a concern for the possible effect that distances or a change in legal jurisdiction could have upon the child or the kind of care received.

Sophistication in child placement grew during the early decades of the 20th century. The basic concerns of the first White House Conference on the Care of Dependent Children were reaffirmed in the 1919 conference which dealt with child welfare standards. The Committee on Minimum Standards for the Protection of Children in Need of Special Care adopted numerous resolutions. Among them were the following:

> Careful and wise investigations of foster homes is prerequisite to the placing of children . . . .

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> A complete record should be kept of each foster home, giving the information on which approval was based . . . .
>
> Supervision of children placed in foster homes should include adequate visits by properly qualified and well-trained visitors, who should exercise watchfulness over the child's health, education, and moral and spiritual development.[16]

Standards based upon these principles were later promulgated by the U.S. Children's Bureau. Clearly, the expectations in regard to investigation of foster homes, and subsequent supervision of children placed in them, is complicated in the case of interstate placements. Still, there was no special mention of this as a problem which needed to be addressed.

The literature on child care licensing focused primarily on intrastate matters as one might expect. An important paper on this subject, written by Ellen C. Potter in 1926, reflects an emerging concern with interstate placements among child care authorities.[17] Commenting on the broad range of individuals and agencies involved in child placement, Potter observes that:

> added to these individuals, agencies, and institutions within the borders of a State, the State (Welfare) department is beset on every boundary by irresponsible individuals and more or less responsible agencies and institutions which place dependent children over the State line and all too often disappear without a trace, leaving the helpless child a charge upon an alien community.[18]

The tone of her statement conveys a feeling of uneasiness over the interstate placement of children and the apparent inadequacy of existing importation statutes to deal with the situation.

Potter's article contained an extensive proposal for the regulation of both public and private agencies and boarding homes involved in child placement. Of particular interest here is her proposal for dealing with the interstate placement issue.

> Perhaps one of the most baffling problems confronting a State Bureau is that involved in the placement of children over the State line by irresponsible organizations and individuals. The attempt to control these placements, up to this time, has been for the most part ineffectual.
>
> It would appear that a solution may lie in this suggested procedure:
>
> > 1. No individual or agency should be permitted to bring or send any dependent child into the State for the purpose of placement in an institution or family home without first obtaining a license to do so from the public welfare

> department, or similar body, of the State in which it is desired to effect the placement.
>
> 2. This license should not be granted unless the application is accompanied by legal evidence that the applicant is licensed (or certified) to undertake child placement in the State from which the child is to be brought.
>
> 3. A blanket bond should be furnished the State into which the child is to be brought by the agency or individual, which would be forfeited in case of failure to remove a child who has become dependent or delinquent within a specified time limit.
>
> 4. A penalty should be imposed upon any native of the State receiving a dependent child from an unlicensed source either within or without the State.
>
> 5. State funds should be made available for the return to this legal residence of any child who may have become a public charge or delinquent within a specified number of years after placement from outside the State . . . .
>
> If the checks upon child placement and adoption as previously indicated . . . seem to leave a loophole for irresponsible placements, an additional legal precaution might be added, as in the laws of Oregon, which specifically forbids "private individuals . . ." to engage in child-placing work and exacts a penalty for their so doing.[19]

Potter's proposal acknowledges that interstate placements are particularly troublesome. Furthermore, her approach combines elements found in the import-export statutes with basic licensing concepts. Regulation of child care was by this time no longer a new concept, but it is important to note that Potter's proposal contains a clear attempt to impose some kind of regulation upon the practice of interstate placement.[20] However, a considerable amount of time will pass before a major attempt is made to establish an interstate mechanism capable of managing the interstate placement of children.

INTERSTATE COMPACTS (1950 TO 1960)

More than 50 years experience with import-export laws, and attempts at regulation through licensing, demonstrated the need for a more effective mechanism by which to regulate and monitor interstate placements. The literature of the 1950-60 period focuses on a new approach to this problem--the interstate compact. Three compacts were developed between 1955 and 1960 which deal with the interstate movement of children.

Frederick L. Zimmermann and Mitchell Wendell, two nationally recognized authorities on interstate compacts, describe interstate compacts as legal instruments which have the full force of statutory law in each party state.[21] In their early form, they were limited to bilaterial agreements used by states to resolve boundary disputes. However, in the period between 1921 and 1940, about 20 compacts of various kinds were adopted, including several which dealt with pressing social needs.[22] One of these compacts--The Interstate Compact for the Supervision of Parolees and Probationers (Parole and Probation Compact)--is of particular significance because it served as the model for the first compact dealing with the interstate movement of juveniles.

All 50 states had joined the Interstate Compact for the Supervision of Parolees and Probationers by 1951, the first compact to have been adopted nationwide. However, this compact was of only marginal use in serving juveniles.[23] It applied only to persons who had been convicted of crime; thus all adult parolees and probationers who were appropriate subjects for placement in other states were covered, but only those juveniles who had been convicted of crime, rather than adjudged delinquent, could qualify. Consequently, out-of-state parole and probation were available to adult offenders but not to juvenile delinquents.[24] Obviously, the same limitations applied to institutional commitments as well.

Bruce F. Burton, in his review of the events precedent to the development of the first compact to address the interstate movement of juveniles, the Interstate Compact on Juveniles (Juvenile Compact), reports that a 1950 survey of five states (Connecticut, Massachusetts, New Jersey, New York, and Pennsylvania) revealed that there existed limited authority to place dependent, neglected, or delinquent children with agencies located outside a particular state.[25] In light of the problems identified in this survey, a compact for juveniles modeled after the Parole and Probation Compact was proposed. After several early drafts had been circulated and reviewed, a final draft was approved in 1955 by attendees at a national Conference on Interstate Problems Affecting Juveniles.[26]

Senator Robert C. Hendrickson, former chairman of a U.S. Senate Subcommittee, expressed the following views in his comments on the conference agenda.

> It is, to my mind, an amazing commentary on our attention to the problems of children and youth that . . . . the legal machinery has not yet been adopted that would permit a juvenile on probation or parole to be supervised in another state or for a runaway to be returned to his parents . . . . Must the father of a child on probation forego better job opportunities in another state because we have been too busy--or have not had the ingenuity--to work out sound legal procedures whereby the child can

> still receive probation services in the new state? Must runaway children by the tens of thousands be dumped at the county line to fend for themselves because we have not been able to work out procedures for their safe and speedy return? I can say that it is high time for us to get our heads together and solve these problems . . . . What is needed is a compact that will work with the minimum of friction while at the same time preserving the essential rights of the child and its parent. I hope that what you emerge with will meet these criteria.
>
> But there is one further area in the field of juvenile delinquency for which interstate compacts may prove most beneficial. I am thinking of the need for compacts under which two or more states would get together to jointly erect and administer specialized institutions for the treatment of certain types of problem children. It is apparent that each state cannot afford to build separate treatment institutions for the many different types of problems encountered in the treatment process.[27]

The Interstate Compact on Juveniles was an almost instant success.[28] Ten state legislatures adopted it the same year in which it was approved by the conferees in New York City. Sixteen more states joined the compact over the next four years, and all but eight states were members by 1965--just ten years after its introduction.[29] Obviously, state legislators and others believed that a compact of this sort would be an effective method for dealing with the interstate movement of children.

Wendell observed that, in the early years, the most extensive use of the Juvenile Compact was in relation to out-of-state parole and probation supervision. He did not consider this surprising in view of the considerable body of experience with supervision under the adult parole and probation compact. The method of operation under the two compacts is very stimilar, and in some states the same person has responsibility for interstate movement under both compacts.[30]

It is important to note, however, that this compact does not focus directly on the issue of out-of-home placement of institutionalization in an out-of-state facility. The compact facilitates the transfer of legal responsibility for supervision of juveniles on parole or probation while in another state, but does not directly address the quality of care received while in the out-of-state placement. It also establishes a mechanism for the return of runaways, escapees, and absconders to the state of original jurisdiction, which really is not a placement issue. Nonetheless, this new compact constituted a distinctly different approach to the interstate placement problem. Furthermore, it was the only approach to date designed to put in place an interstate network for regulating and monitoring the movement of these types of children. Previous approaches were dependent upon the actions of individual states acting alone, often from a defensive position. The compact approach moved the states into an affirmative posture.

There were other compacts developed to deal with out-of-state placements. Also in 1955, the year the Interstate Compact on Juveniles was available in its final form, another compact was developed for the care and treatment of mentally ill and mentally deficient persons regardless of residence requirements, and authorized supplementary agreements for joint or cooperative use of mental health resources.[31] The Interstate Compact on Mental Health (Mental Health Compact) affected a much smaller population of children placed out of state, most of whom were in institutions. However, it expanded the number of children being placed out of state with the assistance of an interstate compact.

The third compact developed in this period that addressed the interstate movement of juveniles was the Interstate Compact on the Placement of Children (Placement Compact). As the name implies, this compact is broader in scope than the other two. The Placement Compact provides a legal and administrative means of permitting child placement activities to be pursued throughout the country in much the same way, and with the same safeguards and services as though they were being conducted in a single state.

> The compact requires notice and proof of the suitability of a placement before it is made; allocates specific legal and administrative responsibilities during the continuance of an interstate placement; provides a basis for enforcement of rights; and authorizes joint actions in all party states to improve operations and services. All U.S. jurisdictions and Canadian provinces are eligible. Consent of Congress is not required until a Canadian province seeks joinder.[32]

This compact was first adopted by New York in 1960, but only ten more states had joined it by 1970. Zimmermann and Wendell assessed the slow adoption of this latest compact in the following way:

> For the most part, the spread of the compact was not impeded by any negativism about either the principles involved or their actual implementation. Rather, an absence of knowledge concerning the compact and the absence of sufficient means to assist States in learning of it and of studying its technical aspects were the inhibiting factors.
>
> But in 1972 a grant was obtained by the American Public Welfare Association from the Department of Health, Education, and Welfare (HEW) specifically to increase services for the compact. Work under the grant began in earnest in October 1972. It consists of a higher level of secretarial services than was previously available; presentation of information on a systematic basis concerning the compact; and technical assistance to States studying the effect which adoption of the compact would have for them.[33]

These efforts in the early 1970s were effective, and a total of 46 states had become members of the compact as of December 1980.

The Placement Compact was developed to remedy deficiencies in the other two compacts. As noted earlier, the Interstate Compact on Juveniles really did not directly address the need for a compact to deal with out-of-home placements made out of state. The driving force was to enable the extension of juvenile corrections services beyond state boundaries. Other interests came to be included, such as the return of runaways, Article X of the compact which enabled states to jointly operate corrections facilities for juveniles, and the Out-of-State Confinement Amendment.[34]

The concept of "placement" seemed a secondary consideration in the Interstate Compact on Juveniles. Burton noted that commitment of a juvenile to an out-of-state institution was not possible under Article VII of the Juvenile Compact, because that article applied only to those on probation or parole.[35] As a matter of fact, actions taken under Article VII were not really "placements." The article provided for the continued supervision of the juvenile by authorities of another state, and only sanctioned the residential (foster home or parental) arrangement in terms of its viability with respect to the intent of the terms of probation or parole. To put it another way, the Juvenile Compact was not a "placement" compact in the sense of being a vehicle for arranging for out-of-home care in another state, whether in foster care or a residential facility.

Perhaps an even greater flaw in the Juvenile Compact was the restriction of its provisions to public agencies. Brendan Callanan and Mitchell Wendell explained the problem this way:

> The Interstate Compact on Juveniles made a start toward solving the problem of what to do with adjudicated delinquents for whom institutionalization in another state is desired, but it did not do so in a truly satisfactory manner. Article X of that instrument authorizes such interstate placements, but it does so in a way which, although not intentionally limiting, effectively confines the facilities that can be used to public institutions.
>
> The reason is to be found in the phrasing of the Article. It authorizes party states to make agreements with one another for the confinement of juveniles by providing that a party state shall receive a delinquent juvenile "in one of its institutions. . . ."
>
> The use of the word "of," if narrowly construed, confines the meaning to facilities belonging to the party states. A private treatment or rehabilitation center may be in a state, but it cannot be an institution of the state.
>
> A substantial need is to serve the special problem delinquent who requires a sophisticated, highly individualized, experimental, or unusual program of care and treatment. There are all too few programs of such kinds. Most of those that do exist are conducted by private agencies--sometimes under religious auspices but also some secular

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> organizations which happen to have become interested in providing services for problem children.[36]

For these and other reasons, the Placement Compact was developed. "Placement" was defined in Article II(d) in this compact as:

> the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

The compact applies to placements made by either public or private agencies or persons.

Placement of a child by his parent directly in an out-of-state foster home was also made possible under the Placement Compact.[37] Burton maintained that one of the main purposes of the Placement Compact was to curb the abuses of the so-called "black market" placement of children for adoption across state lines.[38] Prior to the compact, private placements were possible, yet such placements were always subject to the jurisdiction of the receiving states under import/export laws. As a consequence, such placements, according to Burton, were easy targets of abuse and harm.

> They seldom came to the attention of officials in the receiving state, and often there was no machinery in the sending state for enforcing such placements. It was possible to make such placements without any investigation, with an unlicensed child-caring agency, and where such placement should not have been made at all. The Child Placement Compact remedies this by requiring that the child cannot be sent until the appropriate public officials in the receiving state (Department of Social Welfare in New York) find that the "proposed placement does not appear to be contrary to the interests of the child."[39]

As the 1950s came to a close, the interstate compacts had become a widely adopted mechanism for facilitating and managing the interstate placement of children. However, the next decade will unsettle all of this as a wave of exposes reveal the weaknesses of the compact approach, and a broadside attack is launched against the whole child care system in the country, including the practice of placing children out of state.

THE TURBULENT SIXTIES

The 1960s were turbulent years in the history of American social welfare policy. The decade's first administration spoke of New Frontiers, which included an agenda of massive social welfare reform. The succeeding administration continued with the War on Poverty and other Great Society programs. Yet all was not well in the body politic. Social unrest was fueled by raised aspirations and hope for things which seemed increasingly beyond grasp. The proposed programs eventually bogged down in Congress as the administration became beleaguered by the recalcitrant Vietnam War effort. Student programs against the war merged with long-smoldering racial and economic discontent. The decade ended with a law-and-order administration determined to achieve social reform, but in a much different style than that of the Great Society.

During this period, significant challenges were made to long-standing theory and practice in America's child welfare and juvenile justice systems. Principal among these was a direct challenge to the confinement of children in institutions. Attention focused more and more on the intervention process and the class and minority bias which seemed to pervade these sytems. Although the interstate placement of children was not yet an issue, other issues which emerged in the 1960s set the stage for inquiry into the interstate movement of children in the 1970s. Therefore, a brief look at these issues seems warranted as a way of approaching the events of the 1970s.

Nonintervention in family affairs, and especially in matters of childrearing had for over half a century been the official position of child welfare professionals and advocates. However, Gilbert Steiner, in recounting the history of American child welfare policy, describes an important shift in this position in the 1960s. The previous restraint on intervention was challenged by a developmental philosophy which argues that:

> it is not enough to protect children against abuse and against the most dramatic and evident diseases like polio and blindness, and it is not enough to throw a protective cover over orphans and abandoned children. Without forsaking these activities, it is said, government should reach out to insure the maximum development of every child according to his own potential.[40]

The practical effect of a public policy based upon such a philosophy is to broadly expand the base of services to children to include almost every child. It also would constitute a move away from the traditional target of child welfare services--the dependent and neglected child.

According to Gilbert Steiner, the intellectual underpinnings for the child development approach were the published works of J. McVicker Hunt[41] and Benjamin S. Bloom.[42] Both researchers concluded that the ultimate potential of a person is established in the early years of life--the first five years to be more precise.[43] Most public services for children in general (public education in particular) do not begin until age six, after the most critical years are passed. If children pass through their most important period of development before they ever become part of the education system, so the argument went, then preschool developmental services should be as compelling a public obligation as protection of preschool children against neglect and dependence.[44] Steiner acknowledges that:

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> neither Hunt's Intelligence and Experience nor Bloom's Stability and Change in Human Characteristics directly triggered public policy activity. Whatever their importance for later efforts to effect social policy change, the short-run importance of these works was in the coincidence of their timing with the political needs and purposes of the Kennedy and Johnson presidencies.[45]

These ideas were later incorporated as a major component of the War on Poverty. Headstart and day care were the two most significant programs to emerge from this new child welfare approach.

What is of particular importance in the context of this study on interstate placement is that the "interventionists" achieved a breakthrough in the historic reluctance to involve government in roles traditionally the exclusive province of the family. Both the Headstart and day care programs were designed specifically to remove children from impoverished homes for extended periods each day for same purposes that foster home care had been historically used, namely, to isolate them from conditions associated with dependency and neglect. Although participation in these programs was not limited to children who were neglected, program sponsors acknowledged that their intent was to prevent children from being permanently damaged by their impoverished environment. Obviously, this goal was to be achieved through community resources and without formally removing a child from the custody of his or her parents. This community focus drew public attention, at least momentarily, away from the large number of children still being removed from their homes for reasons of dependency, neglect, and delinquency.

Another development in the child care field occurred in the 1960s--the identification of child abuse as a major problem deserving public attention. In 1962, Charles Kempe and his colleagues published a definitive study of the problem which they called "The Battered Child Syndrome."[46] A year later, the Children's Bureau called a conference of experts to formulate recommendations for dealing with the problem. This group recommended, among other things, that states adopt mandatory reporting legislation.[47] California passed the first legislation and was soon followed by all the other states. Protective service programs were also promoted as a way of dealing with child abuse problems without resorting to criminal prosecution. The rather predictable outcome of these laws, and the public attention given to the problem, was the identification of a greater number of children as potential candidates for removal from their homes.

Paradoxically, while child care professionals were urging broader public intervention, at an earlier age than ever before and on a scale never before attempted, another movement was developing that was intent on curbing the broad authority of public agencies to take children from their parents on the pretext of dependency, neglect, or need for supervision. Extensive literature existed by the late 1960s that was sharply critical of social welfare policies which separated children from their families by the thousands. Before the decade ended, these advocates of children's rights had made household words out of "right to treatment," "deinstitutionalization," and "mainstreaming."

A number of forces were at work during the 1960s which heightened public concern over out-of-home care and, especially, institutionalization. One was a growing body of research findings which seemed to document the damaging effects of institutional life. Another was a concern over a lack of due process for those being subjected to institutionalization. The third was a growing concern for the rights of the confined and the conditions of their confinement.

In the child care area, research findings reported in the 1950s and 1960s were very unsettling. In her review of research on child care institutions, Ann Shyne observed that the literature was impressive and growing.[48] Concern about the impact of institutional care on children was greatly heightened in the 1950s by the publication of John Bowlby's review of research, in which he concluded that children deprived of maternal care for long periods early in their lives were likely to be severely handicapped in their personality development.[49] His publication prompted further empirical research, some of which contested his conclusions.[50] Although the picture is mixed, Shyne concluded that "it is true that there is considerable evidence that an institutional setting tends not to be conductive to the optimal development of the young child and may, in fact, have some deleterious effect on older children."[51] Recognizing the mounting evidence against institutional care for children, Rosemary Dinnage and M. L. Kellmer Pringle wrote, in 1966:

> The time seems to have come for research into residential child care to change its direction; the main focus in the past years has been the effects of deprivation and institutionalization on the child's development. Having shown that these are generally detrimental, attention need now be given to how best to ameliorate unfavorable consequences.[52]

In light of this research, a heavy emphasis developed on placement of children in family settings rather than in institutions. Yet, as Alfred Kadushin noted, in 1966 there were over 60,000 children in institutions for the dependent and neglected, and 42 percent of all types of institutions for children were primarily providing such care.[53] Although deinstitutionalization was becoming a policy preference among child placement agencies, it was clear that total substitute care in noninstitutional settings was still a long way off. A national survey conducted by the Child Welfare League of America in 1966 found that the most frequently cited factor that adversely affected quality of foster care services was the lack of sufficient foster homes.[54] Earlier, the league stated its renewed interest in standards for institutional care was, in part at least, due to difficulties in finding a sufficient number of suitable foster families for certain groups of children and by concern about the effects on children of frequent replacements in foster homes. The league noted that there was a growing disillusionment with foster care because of the poor quality of service of many agencies.[55]

The growing body of literature on the adverse effects of institutionalization was complemented by research on the organizational aspects of the juvenile justice, mental health, and child welfare systems. Sociologists and others became increasingly aware in the 1960s that there was a subtle selection process operating in these social institutions. Evidence was mounting that these systems were oriented toward the poor and minority population, that the more affluent were serviced outside the public social service system, and that contact with public intervention agencies had a stigmatizing or "labeling" effect which conditioned how such persons would be dealt with by others.[56] Institutionalization was considered to be particularly stigmatizing.[57]

Shirley Jenkins cited a series of studies done in the 1960s showing that America had developed not one but two social service systems for children: one for the poor and the other for the more affluent. "In general, voluntary agencies were providing treatment services to children who were not poor; the public system was dealing with poorer children and doing little more than diagnosis."[58] She concluded that the majority of children served in what are commonly known as child welfare agencies appear to be poor; it is a massive welfare system for children.[59] Studies of police and juvenile court cases by Nathan Goldman revealed a similar pattern.[60]

Advocates of children's rights and of the poor became increasingly concerned over the consequences of the class bias that seemed to operate in these major social service systems. For example, Herma Hill Kay and Irving Philips asserted that custody decisions were influenced by poverty, and poverty itself gave rise to the need for such decisions.[61] The consequence is that poor children run a much greater risk of being declared dependent or neglected and removed from their homes than other children, and often primarily because they are poor. Martin Rein, et al. expressed their concern this way:

> Our main thesis is that a good part of the stability and dysfunction in foster family care lies in the system's class biases. In foster care, middle-class professionals provide and control a service used mostly by poor people, with upper-lower-class and lower-middle-class foster parents serving as intermediaries. Their biases control the goals of the system, its boundaries, and the quality of care. A careful review of available data reveals several important paradoxes. For example, though foster care appears to place a premium on the nuclear family, it does little to enable the child to return to his own home or some other more or less permanent one. The result is that foster care becomes a trap for many, and one to which a good deal of stigma attaches.
>
> There is a different pattern of substitute care for the non-poor, such as private boarding schools or care by relatives. Part of the larger system (but not reviewed in this chapter) are services that quite avoid the need for foster family care: day care, psychiatric treatment, maids, day schools. These provisions render a different standard of care, often without public intervention and stigma.[62]

They go on to make the link between class bias and stigmatization.

> Although substitute care for middle-class children is regarded as a service for the convenience of the family rather than as an occasion for the reform of the child and its parents, child welfare services take on a different cast. In this view foster care implies the need for some form of "casework or other treatment service" during the course of which public or charitable funds will be expended. Because the population served by the foster care professional is identified as having "problems," those who fall into the category are marked by social stigma.
>
> Once the system is limited to the poor (or black) their stigma in turn defines the system. Moreover, the reasons for placement of children of lower-income families add further to the process of stigmatization, because they are concentrated on parental problems.[63]

Rein et al. concluded that foster care is an example of a "treatment" system set up to aid the poor and the deviant, which also ensures that society's worst suspicions about them become true and remain so.[64] Helen Stone's assessment of the state of foster care in America at the end of the 1960s indicated the mood of the period: "The strongest wind blowing is the urgency of the need for change in the present system of foster care and the recognition of it by those in practice."[65]

The literature of the 1960s on the problems of the child care, mental health, and juvenile justice systems quickly became grist for the legal mills. The juvenile justice, mental health, and child care systems were confronted with a wave of law suits attacking practices of long standing, many of which did not stand up under legal scrutiny. In a series of landmark decisions, the U.S. Supreme Court handed down ruling after ruling affecting change in the policies and practices of these systems.

Legal actions relative to child placement focused on two basic themes: (1) is the placement (usually confinement in an institution) really necessary and in the best interests of the child? and (2) are the conditions of confinement harmful to the child? The former cases were based upon alleged violation of the Fourth, Sixth, and 14th Amendments of the U.S. Constitution, generally referred to as the due process amendments; and the latter were based on the Eighth Amendment which forbids "cruel and unusual punishment."

Two landmark cases in the 1960s involving the juvenile justice process had perhaps the most dramatic impact on the placement of delinquents since the establishment of the juvenile court at the turn of the century. The cases of Kent v. United States[66] and In re Gault were both directed at the absence of due process in juvenile justice proceedings. Both cases are of importance to the subject of this study because they dealt with dispositions which resulted in confinement (placement). Much of the attention given to both cases, but especially to In re Gault, has centered on what the U.S. Supreme Court required in the way of due process. However, the opinion of the justices in In re Gault, quoting freely and extensively from the literature critical of institutional care and the juvenile justice system, reflected the general skepticism of the day regarding the rehabilitative merit of institutionalization. While not commenting directly on the right of the juvenile court judge to commit Gerald Gault to a juvenile corrections facility, the justices obviously did not want such a placement to be made without first according the subject the fundamental requirements of procedural fairness.

> Ultimately, however, we confront the reality of that portion of the juvenile court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence--and of limited practical meaning--that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or less time. His world becomes "a building with white-washed walls," regimented routine and institutional laws . . . Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.
>
> In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court.[67]

The justices made it rather clear that their concern was institutionalization (or the prospect of it). Elsewhere in the opinion, they added the following clarification which further illustrates their concern over commitment to an institution.

> In reviewing this conclusion of Arizona's Supreme Court, we emphasize again that we are here concerned only with proceedings to determine whether a minor is a "delinquent" and which may result in commitment to a state institution.[68]

Another line of litigation developed in the 1960s which directly affected placement in mental health facilities and corrections institutions--the doctrine of a "right to treatment." The notion of a right to treatment is generally traced to Morton Birnbaum, who first suggested that mentally ill patients should have a constitutional right to treatment or be released from confinement. He believed that mere custodial care under the guise of

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"treatment" is an unconstitutional deprivation of liberty. Since such patients had committed no crimes, the institution must either accomplish its rehabilitative function or give the patient freedom.[69]

The landmark case in the mental patient's right to treatment was Rouse v. Cameron.[70] In his review of right to treatment cases, Erwin Bandy notes that in Rouse, while holding that one involuntarily committed to a mental hospital has a right to treatment, the court gave the institutions some latitude; the hospital need not show that the treatment would cure or improve the patient as long as it demonstrated a bona fide effort to do so.[71] A series of cases heard subsequent to Rouse firmly established the legal doctrine of a right to treatment or release from a mental health institution.[72]

Various writers, taking note of this new legal development, suggested that it might also apply to juveniles confined in juvenile "treatment" facilities.[73] While it was well established that the intent of juvenile corrections was to rehabilitate rather than punish the juvenile offender, the literature of the 1960s was replete with studies which challenged the practical expression of that ideal.[74] Although litigation using right to treatment arguments in juvenile cases did not occur until the 1970s, clearly the groundwork for it was laid in the mental health cases of the 1960s.

This brief overview of a very active period in public social policy should be sufficient to document the widespread concern in the 1960s about the kind of care given to children who "in their best interests" were being removed from their homes. The practice of placing children out of state had not yet surfaced as an issue, despite the intense scrutiny being given to the child care and juvenile justice systems. Rather, the major goals seemed to be to introduce due process to the system; to force improvements in the conditions of confinement for those who needed institutionalization; and to remove from institutions to more "normalized" living arrangements those who did not represent a clear threat to public safety.

As the 1960s came to a close, some important events were developing. Several major study commissions were about to release reports calling for major changes in the American justice, welfare, and mental health systems; deinstitutionalization was soon to become a major national goal; and, imbedded in the litigation of the 1960s, another legal concept would soon have special impact on the interstate placement of children--the principle of least restrictive alternative.

THE 1970s: A DECADE OF CHANGE

The critical mood of the 1960s continued into the 1970s, but now an agenda for bringing about change was beginning to emerge. It was in this period that concern for out-of-home care began to focus on the interstate placement issue. At the national level, the child development approach to child care encountered an unexpected withdrawal of political support. After nearly two years of wrangling, Congress finally passed the Comprehensive Child Development Act of 1971, the most comprehensive pre-school bill ever enacted, only to have the president unexpectedly veto it with a stinging message of rejection.[75] This veto effectively ended the drive for child development legislation at the federal level.[76]

Interest in foster care was still running high in some states in the early 1970s, however. For example, the Citizens' Committee for Children of New York released a report which documented the 25-year child welfare crisis in New York City and the lack of an adequate response to it.[77] Another report was issued in 1971 by the Ad Hoc Committee on Foster Care of Children of the New York State Board of Social Welfare.[78] Both reports spoke of serious deficiencies in services for out-of-home care for New York City children, and offered recommendation. However, neither report addressed the issue of out-of-state placement, perhaps because the practice was not used to a great extent at that time.

The first media attention to the issue of out-of-state placement was in 1972 in Massachusetts. Critics of Massachusetts' deinstitutionalization program charged that the former populations of the closed state training schools were placed in private out-of-state institutions, some of them in foreign countries.[79] The rapid closing of the institutions required the hasty establishment of new private services, and it was necessary to place some juveniles out of state. Whatever the reason, or the numbers actually placed, it is of interest here to note that out-of-state placement was being condemned as an undesirable outcome of the closing of the corrections facilities. It was the first public attention to be given the issue in more than ten years.

The commissioner credited with the Massachusetts deinstitutionalization trend, Jerome Miller, moved to Illinois in 1973 to assume responsibility for that state's child welfare agency. He found nearly 1,000 Illinois children placed out of state, many of them in Texas.[80] A study was commissioned for children placed in Texas and a policy for immediate return of children placed out of state was established.[81] The discovery that children were being placed out of state was met with news stories on alleged abuses to children in these out-of-state facilities. The findings of the study indicated that Illinois wasted dollars in payment for services of unacceptable quality and for services that in some cases were not needed. Abuses abounded; some children were physically abused, and most were judged to be psychologically abused. In addition, there was abuse in the administration of medication. Licensing procedures by Texas were declared inadequate and the lack of monitoring allowed institutions to receive more children than their allowable capacity. The report concluded with recommendations regarding monitoring practices, placement procedures, administrative restructuring, alternatives to be made available to courts short of placement, reforms for administering guardianship responsibilities, and compensatory education opportunities for the children returned from Texas.

In Texas, meanwhile, the media began exposing unlicensed child care facilities holding out-of-state children. The Texas House of Representatives responded by establishing a Committee on Human Resources to study child care in Texas. Public hearings were held and it soon became obvious that:

> Texas is presently unable to legitimately claim that all children receiving out-of-home care are receiving the minimum levels of care and treatment which we feel is this state's responsibility to guarantee.[82]

Shortly after the committee began its deliberations, Texas was confronted with the Morales federal court decision, and a few months later with the Gary W. decision, the latter involving Louisiana children in Texas institutions. The committee's report was not issued until November 1974, but by then remedial steps had already been initiated. The Morales decision was an important one in the right to treatment litigation. The plaintiffs, in a class action suit, detailed a number of abuses, including physical beating of inmates, substandard facilities, and inadequate treatment programs. The U.S. Circuit Court held that the institutionalized juveniles of Texas had both a state statutory and a federal constitutional "right to treatment."[83] In an extensive 200-page memorandum to its opinion, the court addressed the principle of least restrictive alternative.

> An important incident of the right to treatment is the right of each individual to the least restrictive alternative treatment that is consistent with the purpose of his custody . . . .
>
> This principle, as it relates to an institutionalized juvenile's right to be free from unnecessary and arbitrary restrictions placed on his freedom of movement, speech, and privacy, has already been discussed. Yet the principle has another, perhaps more significant corollary . . . .
>
> Just as the state cannot mechanically hospitalize every person found to be mentally ill,. . . it may not institutionalize every child that the state's courts declare to be a delinquent. Yet, the testimony at trial established that the Texas Youth Council seldom, if ever, places a child committed to its care in any situation except a TYC institution. Moreover, testimony of expert witnesses at the trial was practically unanimous that not all of the children committed to the custody need institutionalization. Estimates of the number who did require care in a secure residential facility ranged from ten percent to fifty percent. The TYC has explicit statutory authority for using community-based programs to effect the treatment of children committed to its care,. . . but has chosen to ignore that grant of authority and pursue institutionalization as its sole alternative. This choice is not permissible under the Constitution.[84]

The Morales case against Texas was quickly followed by a class action suit in Louisiana involving the placement of mentally retarded, emotionally disturbed, and other Louisiana children in Texas institutions. The plaintiffs in Gary W. et al. v. State of Louisiana claimed that the placements deprived them of treatment rights to which they were entitled under the Constitution and federal statutes and, further, "the mere fact of their placement in out-of-state facilities is itself a denial of adequate treatment and therefore violates federal statutory and constitutional rights."[85] To support their claim that out-of-state placements were per se illegal, the plaintiffs asserted that the:

> primary objective of institutional treatment must be the reintegration of children into their families and home communities . . . . The family of a child placed in residential treatment in Louisiana has the opportunity to participate in the child's treatment program and life by visiting the child and having the child make day or overnight visits home . . . . When institutional care is required it should be afforded near the parent's home; its goals must be the return of the child to the home; and the placement of the child must be in accordance with the inexorable application of "least restrictive alternative:" that is, the kind of treatment that is both nearest the home and imposes the least of all possible restrictions on the child's freedom.

While the right to treatment has chiefly been used to get an individual to appropriate treatment without regard to state boundaries, the Gary W. case was an attempt to use the principle to withdraw children from placements. Even though the Gary W. court granted plaintiff's relief, it did not hold that the right to treatment, federal law, or the Constitution provides a blanket prohibition on out-of-state placements. The Gary W. court held:

> What is required is that the state give thoughtful consideration to the needs of the individual, treating him constructively and in accordance with his own situation, rather than automatically placing in institutions, perhaps far from home and perhaps forever, all for whom families cannot care and all who are rejected by family or society.

The court rejected the plaintiffs' claims that legal principles forbid Louisiana officials from placing children in Texas institutions and require them to place children in their own communities.

The Gary W. court's refusal to issue a blanket prohibition on out-of-state placements is consistent with other decisions that examine an individual's right of association with family and friends. Although premised on other constitutional grounds than the right to treatment, these other cases examine how far a state may remove a person in custody from family and friends.[86]

The intensity of the media coverage of the Illinois, Louisiana, and Texas issues aroused concern in other states. Probably one of the more important works to date was a book written in 1976 by Kenneth Wooden, Weeping in the

Playtime of Others: America's Incarcerated Children.[87] Wooden's book attracted considerable attention. He argued that incarcerated children are the victims of the very system that was established to serve them. It is written in the tone of an investigative reporter with the intent of inciting the reader to action. One chapter deals with the interstate commerce of children. The book relies heavily on secondary sources and, although there was so little reliable information about interstate placement, the anecdotal illustrations sometimes strain credibility when they are purported to be typical.

Others also have recounted "horror stories" of interstate placement practices across the country. On September 21, 1975, Seth Kantor, in an article for the Washington Post entitled "Interstate Business: Troubled Youngsters," wrote:

> In each case, the youngsters involved are from other states, shipped off at public expense to privately operated facilities in what has become a booming new "child care" industry.

Kantor estimated that at least 15,000 children between 1973 and 1975 had been sent to facilities which had been "springing up across small towns and rural America" at a conservative cost of $120 million in public dollars. Kantor highlighted stories of substandard and inadequate facilities, little accountability, and extreme physical and mental cruelty.

The same themes were repeated on August 14, 1977, by reporter J. C. Barden in a page-one New York Times article entitled "Human Welfare Groups Concerned over Dispersal of Problem Children." In this lengthy article, Barden estimated that 20,000 children had been placed in institutions in other states. This practice represented a growing trend of placing-out, particularly the hard-to-place child--the juvenile delinquent, the retarded, the neglected, and the physically handicapped.

The media pressure continued. Also in 1977, NBC broadcast a radio story, "Out of State, Out of Mind," on the placement of children from New York and New Jersey in foster care institutions in other states. The media also were zeroing in on unlicensed child care facilities which housed a number of out-of-state children. The CBS weekly news documentary program, "Sixty Minutes," explored several such facilities during its October 22, 1978, broadcast, entitled "Brother Roloff." According to CBS news correspondent Mike Wallace:

> The Reverend Lester Roloff is a south Texas evangelist who's been preaching the Gospel and running homes for wayward children, girls and boys, for the last 30 years. And he's been in trouble with the State of Texas about it for the last ten years. We heard about Brother Roloff, as he is known to his followers, through newspaper reports that said some children had to be taken to his home in handcuffs, that his homes were like prisons, and that children in his custody were punished physically so severely that the State of Texas has taken him to court.[88]

In a case which went up to the U.S. Supreme Court,[89] the State of Texas was granted the right to close down Roloff's unlicensed homes for children, to which Brother Roloff responded: "The Supreme Court has shot the Holy Spirit out of the saddle."[90]

The extensive media attention given to the issue spurred a number of inquiries into interstate placement. After the Illinois, Louisiana, and Texas experience was widely publicized, other states became concerned and launched studies of their own.

A series of studies have been made of the interstate placement of children in New York, and in New York City in particular. Although some children had been placed out of state by New York state agencies since 1957, the practice apparently was not extensively used until the early 1970s, when the state began to deinstitutionalize its developmentally disabled population.[91] A "least restrictive environment" class action suit was brought against the state's Willowbrook facility for the developmentally disabled in 1973, and a consent decree required the state to immediately begin placing members of the class in alternative residential settings, many of whom were placed out of state.

Barbara Blum, then-commissioner of the New York Department of Social Services, in testimony before the New York City Board of Estimate on September 8, 1978, described the situation as follows.

> Several factors have contributed to the need to place children with special needs outside of the state. First of all, it must be recognized that the foster care system in New York State historically has not provided care for the more disabled and older children in need of placement. Such children had been cared for, instead, in state facilities. In the late 1960s and early 1970s, the operating budgets of these developmental and psychiatric centers were reduced drastically resulting in cutbacks in staff and significant changes in admission and discharge policies.
>
> Admissions were closed to many children requiring special care who would have gained admittance easily a few years earlier. Similarly, discharges were more likely to occur during this period particularly if a child was ready for transfer from a children's psychiatric unit to an adult facility . . . .
>
> This situation was made more complicated by a great deal of activity in the courts, activity for the most part initiated to protect children in institutions to improve available services. The Willowbrook case is the best known of these court cases and may have the greatest impact on relevant service design for the future.

> When the impact of these changes first began to be felt in the early 1970s, the foster care system, including a number of voluntary agencies, struggled to develop new programs. Despite the overall inadequacy of this response, some exceptional programs were created to meet the unique needs of children who are autistic, profoundly retarded, violent and/or physically disabled . . . .
>
> The fiscal crisis in New York State significantly altered the feasibility of this interim solution. Program development came to a complete halt as agencies--public and private--grappled to save existing services. Since no facilities were being developed to provide alternative care, out-of-state placements from New York City continued at a rate of approximately 100 placements each year.[92]

As deinstitutionalization continued and searches for less restrictive settings within the state were frustrated, more and more children were placed in settings outside of New York. A 1976 study of out-of-state placement by the New York State Division for Youth, released in 1977, brought public attention to the issue in New York. The report found that at least 804 New York children were in placement out of state at that time, and the number was on the increase.[93] The trend was to turn to out-of-state facilities to provide treatment for those children who were hardest to place or the most troubled--those with severe emotional problems or multiple handicaps.[94] Problems the report identified included broken communication between the children placed and their families, inability of New York agencies to evaluate and monitor the quality of these programs, and the fragmented responsibility for children placed out of state. Centralized information on these children was found to be inadequate, and in some cases nonexistent.

In 1977, the New York Civil Liberties Union filed a class action suit on behalf of 350 New York City youngsters (Sinhogar et al. v. Parry et al.), testing the authority of New York officials to place youth in out-of-state facilities.[95]

In addition to due process and equal protection claims, the plaintiff's complaint challenged out-of-state placements because the institutions involved "are not authorized agencies as defined in Social Services Law 371(10) and which are not visited, inspected or supervised by the New York State Board of Social Welfare." Other defects of the placements cited in the complaint included noncompliance of the out-of-state facilities with New York standards for child care institutions, failure to assure that the programs are appropriate for each child's needs and, by implication, the discouragement of the development of appropriate facilities within New York.

In response to these events, Howard L. Fasher, a Democrat-Liberal from Brooklyn and chairman of the New York Assembly Child Care Committee, introduced a bill before the legislature that would:

> (1) Establish a quasi-public, nonprofit corporation to care for children presently not served by programs within

New York. These children are often patients released by state mental hospitals who are severely disturbed, violent, retarded and/or handicapped.

(2) Require state approval of all out-of-state placements; and

(3) Mandate annual state inspections of all out-of-state institutions caring for New York children. It would also require that visits between parents and children placed out of state would be arranged twice a year.[96]

Although the bill did not pass, it was evidence of the level of public concern in New York over out-of-state placement of children.

The controversy continued on into 1978 as the state attempted to cope with the problem of bringing children back to New York. The political pressure continued to mount. Manhattan Borough's Andrew J. Stein urged the city to stop placing its severly mentally retarded children in out-of-state institutions. Stein also urged that the children that were presently out of state be returned home. Stein's charges stemmed from an unannounced inspection of two facilities in Florida by members of his staff who reported that the children were not being properly supervised.[97]

In October 1978, the New York State Council on Children and Families delivered a 27-page report to Governor Hugh Carey outlining steps the state was prepared to take to deal with the out-of-state placement problem.[98] On January 17, 1979, the New York State Supreme Court ruled on the Sinhogar case, declaring the placing of foster care children in out-of-state institutions to be unconstitutional. By this time, the number of New York City children reported to be in out-of-state placement had been reduced to 290.[99] Shortly thereafter, Governor Carey announced that the state would end its policy of sending handicapped children out of state for education and treatment, and all children currently out of state would be returned by April 1, 1980.[100]

As public attention focused on out-of-state placement in New York, neighboring New Jersey was also becoming aware of similar problems. It, too, had experienced closing of its larger institutions.[101] In 1975, the New Jersey Citizens Committee for Children, a voluntary group, examined long-term residential care for New Jersey children.[102] The study reviewed general placement practices in the state and highlighted out-of-state placements in its report. However, the practice did not surface as a controversial practice until the release in 1976 of an evaluation report on 76 treatment centers used by the New Jersey Division of Youth and Family Services (DYFS), prepared under the auspices of the Turrell Fund, a private organization in East Orange that has assisted needy children with grants for 41 years.[103] Commenting upon the report, Robert B. Nicholas, Chief, DYFS' Bureau of Residential Services, acknowledged that New Jersey lacked enough qualified foster homes and residential facilities, resulting in the need to send more than 600 children out of state.[104] Nicholas was quoted as saying:

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> We prefer to keep these kids in New Jersey because we believe the child should be as close to his home community as possible. Right now, those we send out of state are kids with the severest emotional problems. It's unfortunate that we don't have a sufficient number of facilities for them in New Jersey.[105]

One institution identified in the report was the Montanari Residential Treatment Center in Hialeah, Florida, which had been the subject of a CBS "Sixty Minutes" documentary in November 1976. The televised program was highly critical of the facility which, at the time, reportedly had 34 New Jersey children placed there by the DYFS. The Public Defenders Office filed a motion in Essex County Juvenile and Domestic Relations Court in January 1977 to block the return of two youth to Montanari after having spent Christmas vacation with their parents. The judge was so incensed by what he had learned that he opened the hearing to the media, saying "The people are entitled to know about this situation at Montanari, and I want the case covered by the media."[106]

The New Jersey legislature promptly launched an investigation and held hearings on the problem. While the legislators were conducting their probe, the New Jersey Office of the Public Advocate conducted a study of its own which was released in April 1977. The report was highly critical of state policy and called for immediate remedial action.[107] The legislative study was completed June 30, 1977.[108] The report stated that DYFS supervises 11,000 children placed outside the homes of their natural families. Of this number, 613 are placed in residential care centers outside New Jersey. The children placed outside New Jersey are generally described as "hard to place" because they are older, aggressive, or severely disturbed youth who have been or would likely be rejected by New Jersey facilities. Less than 50 percent of the cases reviewed by this study had been referred to in-state agencies before being placed out of state.

Of the cases studies, most of the children placed out of state were referred to DYFS by parents or schools. Social workers did not follow DYFS policy regarding residential placements, as documented by case files. In 53 percent of the files studied, there was no evidence that the child had been rejected by a New Jersey facility prior to out-of-state placement. In general, it was reported, out-of-state facilities are no more sophisticated than some of the centers in New Jersey. Children are placed in some of the out-of-state residential facilities because they are referred and accepted--not because the programs offer unique services not available in New Jersey.

Later that same year, the DYFS issued its own report and offered a plan for returning children to New Jersey as quickly as possible and restricting future placements to facilities no further than 50 miles from the New Jersey border.[109] The report notes, however, that the move to return children to New Jersey has been opposed by some parents, stating that there had already been some resistance from the parents of children who have been precluded from going to prestigious out-of-state facilities due to the plan.

During this same period, the Virginia General Assembly launched an inquiry into child placement practices in Virginia. Unlike the situation in New York and New Jersey, the study was not in response to a law suit or media exposé. Pursuant to a house resolution passed during the 1976 session, a Subcommittee on the Placement of Children was established within the Committee On Health, Welfare and Institutions of the House of Delegates. The subcommittee held meetings and hearings throughout 1976 and submitted its report early in 1977.[110]

The subcommittee included professionals from the major child-serving agencies in Virginia. Agency heads or their delegates, along with lay persons were all asked to present certain information at each of these meetings. A great deal of statistical data reflecting numbers of children in placements and costs of such placements was gathered.

The primary thrust of the concluding section of the report was that little new or startling information was brought to light by the efforts of the subcommittee. However, it was time for action by the Virginia General Assembly. Virginia child-serving programs needed to be enhanced and upgraded within the state so that fewer out-of-state placements would be necessary.[111]

In 1978, the Colorado Office of Planning and Budget conducted a study of out-of-home placements, largely out of concern over escalating costs and case loads, crises within individual facilities, an absence of indications of program effectiveness, and service delivery problems.[112] The focus of the study was on out-of-home placements in general. However, the report acknowledged that a significant number of children were in out-of-state placements due to a perceived lack of Colorado resources to provide treatment. The report contends that "Colorado (should) move to develop the placement resources within the state that would virtually eliminate out-of-state placements." While acknowledging the need for a few out-of-state placements because of the prohibitive cost of providing services to meet unique needs, the study concludes: "Out of state placement severely hampers resolution of the problems of the family and the child."[113]

These state-specific studies indicate that crossing state lines to secure placements for children greatly accelerated in the 1970s, largely as a by-product of the deinstitutionalization movement begun late in the 1960s. Local services simply were not available in sufficient numbers in some states. In order to comply with public policies calling for the removal of certain children from mental hospitals and large congregate training schools, agency officials turned to the purchase of services wherever they could be found--in the state or out of state. Then came the least restrictive alternative law suits and public exposés of abuses suffered by some children placed out of state. Beginning about 1975, the practice of placing children out of state became highly controversial. By the end of the 1970s, a number of states had reversed their policies, as the reports reviewed above have documented. Although there was evidence that some children suffered from out-of-state placement, the potential benefits of such placements seemed to be obscured. Each study called attention to poor monitoring of placements and lack of information about them, but the states were "under the gun" to bring the children home rather than to improve the out-of-state placement process. Barbara Blum, in her testimony before the New York City Board of Estimate, cautioned about the problems that will accompy this change in placement policy.

> As we contemplate how best to mobilize our resources, all of us must be careful not to opt for easy solutions, for the problem we confront is one of great complexity.
>
> We must be mindful that in-state placement does not always produce greater accessibility for families. Programs in Connecticut or Pennsylvania are often closer than programs in Western New York.
>
> The principle of continuity of care must be considered. Some of the youth placed out-of-state are receiving fine care and are thriving. Consideration must be given to the impact of moving these young persons, . . .
>
> The professional skill and commitment required to sustain the programs needed must be recognized. Our professional communities in New York State have been inclined to direct attention toward children and youth who will respond readily to known treatment techniques. There has been a great reluctance on the part of many specialists to engage in treatment of the most disabled members of our community . . . .
>
> Costs for the programs needed will be high. We must all acknowledge that labor costs as well as costs for physical space are greater in our state than in most others . . . .
>
> Community attitudes will need to be reshaped. Tax payers will need to understand the programs we are proposing and that such programs can be integrated successfully into our community life. A great deal of education and political leadership is needed to accomplish these changes.[114]

Ilene Margolin, Executive Director of the New York Council on Children and Families, echoed this concern in her testimony before the Board of Estimate.

> While we may all agree that as a matter of policy New York children should not be placed out-of-state, the precipitous removal of a child from an out-of-state agency which meets New York State's standards and which is serving the child's needs, should be avoided. If a child is receiving quality care and has developed attachments to staff, it could be counter therapeutic and even traumatic to move his or her. Placement changes must be planned, must involve careful clinical considerations, and should result in more appropriate services, which are closer to children's homes.[115]

In addition to these studies that are state-focused, a few national studies on the out-of-state placement issue were conducted in the 1970s. The earliest of them was by Roberta Hunt of the Child Welfare League of America, Inc., dealing with obstacles to interstate adoption.[116] Although adoption is often not considered a "placement" in the same sense as foster care or institutional placements are, Hunt's study identified some aspects of the interstate movement of children that are germane to the current study. Perhaps the most relevant are her findings regarding the interstate compact.

> Relatively few respondents even mentioned the Interstate Compact on the Placement of Children. One respondent from a state that is a member of the Compact reported that some agencies in Compact member states seem unaware that their state is a member. Since the Compact is the only instrument yet devised to deal with at least some of the problems cited by respondents, it seems clear that it must become more widely known and understood. Its potentialities must be fully explored.[117]

This situation appeared particularly distressing because of the great variation in state law and practice. In describing the obstacles she discovered in her research, Hunt stressed the importance of making the compact arrangement work.

> It appears that the only way incompatibility between laws of some states can be resolved is by agreement among all states on the principle that the jurisdiction of the Interstate Compact and that the designated agency in the receiving state be clearly authorized to act for the agency holding guardianship responsibility in the sending state.[118]

In conclusion, Hunt made this observation.

> The basic impediment to the facilitation of interstate adoption is that NO ONE IS NOW IN CHARGE of regulating it on a nationwide basis. The Interstate Compact on the Placement of Children, when fully understood and administratively supported, offers a framework for centralizing authority, for resolving differences, and for dividing responsibility between participating members.[119]

Hunt's study identifies a major weakness in the compacts--lack of awareness of them by those who make placement decisions. A great deal of time had been vested in the compacts throughout the 1950s and 1960s. Subsequent research in the 1970s will further document Hunt's concern about the poor administration of the compacts. Her strong endorsement of the Interstate Compact on the Placement of Children indicates, however, that compacts were still considered a major mechanism by which to manage the problems of interstate placement.[120]

At the height of the public reaction to the CBS "Sixty Minutes" television documentary on the Montanari facility in Florida, the Council of State Governments (CSG) launched a national study of the problems of developmentally disabled individuals placed in out-of-state facilities.[121] The CSG study, prepared on behalf of the Developmental Disabilities Office of the U.S. Department of Health, Education and Welfare, concluded that the practice of out-of-state placement was not a problem in itself. The critical issue is whether each placement is subjected to rigid restrictions to assure that it is in fact the most humane and practical decision.[122]

Three national studies on the issue were released in 1978. The Children's Defense Fund (CDF) had completed a two-year study of the current status of child placement in the United States.[123] Interstate placement was given major attention in the report, although the purpose of the report was to determine how well public child care agencies were carrying out mandated responsibilities to children placed out of their homes; how effective existing laws covering out-of-home placements were; where local, state, and federal policies and practices fail to meet the needs of these children and their families; and what can be done about it.[124] In the area of interstate placements, the CDF found that many states did not know how many children were in out-of-state residential facilities. The data revealed "tremendous variation from state to state in reliance on out-of-state placements. Several states accounted for large numbers of children, while others sent only a few children out of state."[125] Information on children entering into their states was almost nonexistent.

The CDF study seemed to confirm what the state-specific studies had shown concerning the type of child generally placed out of state. The report stated that "two types of children appear to be the most likely candidates for out-of-state placement: adolescents who are retarded or who have behavioral or emotional problems and multiply handicapped children needing specialized treatment resources. They are also likely to be children who have been rejected by in-state agencies."[126]

The CDF found regulation of interstate placement generally ineffective. Although state policy generally requires that an out-of-state facility be licensed, the CDF respondents acknowledged that the requirement was not always followed. No state required that the out-of-state facility meet its own licensing standards; it merely accepted whatever standards the other state set. They also noted the overreliance of placement workers on the promotional literature provided by facility entrepreneurs. Only ten states reported the use of on-site visits to facilities in other states, and even among these states the review did not match the rigor with which an in-state facility would be evaluated.

The CDF study indicated a serious breakdown in the interstate compact mechanism.

> Our survey revealed that participation in the compact appeared to have had little impact on the knowledge of state officials about children out of their own state, or on state efforts to protect such children more effectively. All but one of the states unable to provide data on numbers of children sent out of state were Compact members. Many Compact states could not tell us the numbers of children entering the state. Three of the six states requiring on-site reviews of the children were Compact members; three were not. Six of the ten states conducting some kind of on-site facility reviews were Compact members; four were

> not. Compact membership, in short, appears to have little effect on the extent of a state's effort to control out-of-state placements and monitor what happens to the children in them.[127]

The report recommended that the Interstate Compact on the Placement of Children be strengthened to include clear protections for children in out-of-state placements, a delegate from the sending state should be required to periodically visit the child and the facility, and the compact secretariat should be responsible for maintaining national data on the extent of interstate placements.

A second study released in 1978 was published by the Council of State Governments, and was the precedent to the current study.[128] CSG, in conjunction with the Academy for Contemporary Problems, undertook a feasibility study in three states to determine the accessibility, retrievability, and reliability of certain types of data related to the interstate placement issue. The belief was that a national effort might be ill-advised unless it was first determined that the requisite data could be obtained. The feasibility of such a national study was established and indicated what records are likely to exist, what information is not retrievable, and the best sources for various data elements. This study also found that, typically, cognizant state officials believed they were aware of practically all the interstate placements which involved their state, but that, in reality, they knew of a relatively small portion of the children sent or received across state lines. The report also contained a review of current law affecting interstate placement and interstate compacts which showed that most statutes authorizing judicial or executive agency placements of children out of their own homes do not limit such placements to in-state care. In fact, geographic restrictions of any kind are rare.[129]

A third report was issued in 1978 by the New York State Council of Voluntary Child Care Agencies entitled Where Are the Children? The report was based upon an academic thesis written by Adeline Bliven at Rutgers University. Under the auspices of the state council, Bliven surveyed the interstate compact administrators to secure information regarding state procedures for processing interstate placements. Her conclusions generally followed those in the Children's Defense Fund study.

> The major conclusion of this study is that very few states have centralized information on either their procedures for placing out-of-state or the children placed out-of-state. The same is true in situations where non-resident children are received into a state.
>
> Data revealed that while the majority of states are party to the ICPC, very few states utilize it as a mechanism for control and accountability of placements of children in out-of-state facilities. In the majority of states, several or more departments in the child welfare and related systems, have autonomy and authority to place children in out-of-state residential facilities. Also, in most of the

> respondent states, voluntary agencies place autonomously, and proprietary agencies do so in 9 of the states . . . .
>
> Furthermore, in most states there is no coordinated system for evaluation and monitoring of facilities in-state and out-of-state that accept non-resident children. While a majority of respondent states indicated their Social Service Department made evaluations of facilities, these same states reported that other units of the social welfare system also made evaluations. Many states reported they did not know if other units made evaluations . . . .
>
> As noted in the summary of findings, very few states knew the number of the children they placed out of state or received into their state either in terms of total numbers, or, more specifically, by handicapping condition or length of time in placement . . . . States able to report at all on these issues indicated that children sent out of state or received into a state had "very special needs," but without specificity as to what these needs were. If states themselves have no central registries or characteristics of these children, they can be in no position to determine if frequency of a type of child in their state warrants creation of a public or voluntary agency in-state to care for youngsters with a particular need or group of characteristics . . . .
>
> Finally, the survey indicated that most states reported no central mechanism for control of payments for services purchased from out-of-state facilities. Substantial sums of money are spent sending children to specialized facilities out of state. Centralizing this information would give a state the real figure as to such cost.[130]

These reports confirm the lack of knowledge about interstate placement of children, and a general concern about the welfare of children so placed, but a reluctance to outright condemn the practice. The interstate compacts are still seen as a potentially useful method for dealing with the problems identified, but they have as yet failed to provide the type of coordination and management envisioned for them. The major problem with the compact approach, as identified in these studies, is the general disarray of the child placement process. Until control over child placement is centralized, these reports contend that the compacts cannot be effective.

A review of the 1970s would not really be complete without some mention of two major pieces of federal legislation which have and will continue to heavily influence child placements; both were enacted in 1975. Public Law 94-142, the Education for All Handicapped Children Act of 1975, requires that all handicapped children and youth defined as mentally retarded, hard of hearing, deaf, orthopedically impaired, other health impaired, speech impaired, visually handicapped, seriously emotionally disturbed, or learning disabled are guaranteed appropriate special education and related services.[131] Moreover, specially designed instruction to meet the unique needs of the child must be provided at no cost to parents or guardians. The heart of the law is assurance from participating states that they will provide to all handicapped children an education in the "least restrictive" environment; in other words, to the maximum extent possible, handicapped children will be educated with children who are not handicapped. According to Mary McCaffrey and Scottie Higgins:

> The act, an affirmation of numerous court decrees, prior federal law, and progressive professional instructional practice, reflects the decade of dramatic changes in the legal and power relationships between handicapped children, their parents, and the educational system. Concepts such as "right to education," "due process," and others now are an inseparable part of the instruction of handicapped children. In addition to being child oriented, the Education for All Handicapped Children Act takes into account the need for parent, teacher, and instructional support. Furthermore, the handicapped child's right to a free, appropriate public education in the least restrictive educational environment has been reaffirmed with the enactment of Section 504 of the Vocational Rehabilitation Act of 1973, the basic civil rights guarantee with respect to discrimination against the handicapped.[132]

In the same session, Congress enacted the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (P.L. 94-103). In delineating the rights of the developmentally disabled, the act requires that services "be provided in the setting that is least restrictive of the person's personal liberty." In addition, the act (Section 132) requires that a percentage (not less than ten percent the first year, 30 percent for succeeding years) of funds allotted to each state be used to "eliminate inappropriate placement in institutions." Other provisions of the act relate to deinstitutionalization with their emphasis on early screening, coordination of community providers, and support for establishment and maximum utilization of community resources.

Both of these acts are built on the least restrictive alternative principle which developed out of the right to treatment litigation of the 1960s. They provide the federal impetus for state deinstitutionalization of many of the children previously subject to out-of-home care. Clearly, early efforts at deinstitutionalization fueled the interstate movement of children in the mid 1970s and this federal mandate of a broad, least restrictive environment policy could have the same repercussions. It remains to be seen if the federal and state governments can raise the resources necessary to fulfill the objectives set forth in these two significant pieces of legislation without inadvertently supporting residential placements to settings considered less restrictive in environment but located at some distance from the children's homes, even out of state.

FOOTNOTES

1. Hastings H. Hart, "The Development of Child Placing in the United States," in *Foster-Home Care for Dependent Children* (Washington, D.C.: U.S. Department of Labor, Children's Bureau, 1926), p. 3.

2. Miriam Z. Langsam, *Children West* (Madison, Wisc.: University of Wisconsin Press, 1964).

3. See Hastings H. Hart, "Placing Out Children in the West," in *Proceedings of the National Conference of Charities and Corrections* (Boston, Mass.: 1884), pp. 143-50. For an understanding of Brace's own assessment of his work, see Charles Loring Brace, *The Dangerous Classes of New York and Twenty Years Work Among Them* (New York, N.Y.: Wynkook and Hallenbeck Publishers, 1872).

4. These and 11 other papers on child care were published in an anthology for the first White House Conference on the Care of Dependent Children. See, *Care of Dependent Children in the Late Nineteenth and Early Twentieth Century* (New York, N.Y.: Arno Press, 1909).

5. Hart, "The Development of Child Placing," *Foster-Home Care*, p. 4.

6. Hart, "Placing Out Children," *Proceedings of the National Conference*, p. 143.

7. Ibid., p. 144.

8. Hart, "The Development of Child Placing," *Foster-Home Care*, p. 7.

9. Ibid., p. 7.

10. Roberta Hunt, "Obstacles to Interstate Adoption," mimeographed (New York, N.Y.: Child Welfare League of America, 1972), p. 17.

11. Ibid., p. 17.

12. For a full discussion of these and other statutes affecting child care and placement, see Chapter 3 of this report.

13. Hunt, "Obstacles to Interstate Adoption," p. 17.

14. Hart, "The Development of Child Placing," *Foster-Home Care*, pp. 10-11.

15. U.S. Senate, *Proceedings of the Conference on the Care of Dependent Children* (Washington, D.C.: U.S. Government Printing Office, 1909), pp. 195-200.

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17. Ellen C. Potter, "State Supervision of Placing-Out Agencies," in *Foster-Home Care for Dependent Children* (Washington, D.C.: U.S. Department of Labor, Children's Bureau, 1926), pp. 165-92.

18. Ibid., p. 167.

19. Ibid., p. 181-82.

20. Norris E. Class, "Child Care Licensing and Interstate Placements: An Essay on Public Policy Planning," in *Major Issues in Juvenile Justice Information and Training: Readings in Public Policy* (Columbus, Ohio: Academy for Contemporary Problems, 1981), pp. 97-124.

21. Frederick L. Zimmerman and Mitchell Wendell, *The Law and Use of Interstate Compacts* (Lexington, Ky.: The Council of State Governments, 1976), p. 1.

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23. Mitchell Wendell, "The Interstate Compact on Juveniles: Development and Operation," *Journal of Public Law*, vol. 8 (1959), p. 526.

24. Ibid., pp. 526-27.

25. Bruce F. Burton, "Interstate Placement of Juveniles," *Columbia Journal of Law and Social Problems* (June 1967), p. 173.

26. New York Joint Legislative Committee on Interstate Cooperation, "Resume: Conference on Interstate Problems Affecting Juveniles," mimeographed (Albany, N.Y.: 1955).

27. Ibid., p. 5.

28. For a more thorough explanation of this compact's purposes and functionings, as well as the two other compacts relevant to the placement of children, see Chapter 4 of this report.

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30. Wendell, "The Interstate Compact on Juveniles," *Journal of Public Law*, p. 528.

31. Council of State Governments, *Interstate Compacts and Agencies*, p. 15.

32. Ibid., p. 5.

33. Frederick L. Zimmermann and Mitchell Wendell, "Interstate Compacts," in *The Book of the States, 1974-75*, vol. XX (Lexington, Ky.: The Council of State Governments, 1975), p. 269.

34. Brendan Callanan and Mitchell Wendell, "The Interstate Compact on the Placement of Children," *Juvenile Justice*, vol. 26 (May 1975), pp. 43-44.

35. Burton, "Interstate Placement of Juveniles," *Columbia Journal of Law*, pp. 182-83.

36. Callanan and Wendell, "The Interstate Compact on the Placement of Children," *Juvenile Justice*, p. 43.

37. Interstate Compact on the Placement of Children, Article II(b).

38. Burton, "Interstate Placement of Juveniles," *Columbia Journal of Law*, p. 191.

39. Ibid., p. 191.

40. Gilbert Y. Steiner, *The Children's Cause* (Washington, D.C.: The Brookings Institution, 1976), p. 3.

41. J. McVicker Hunt, *Intelligence and Experience* (New York, N.Y.: Ronald Press, 1961).

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51. Ibid., p. 117.

52. Dinnage and Pringle, *Residential Child Care*, p. 47.

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89. *Roloff Evangelistic Enterprises, Inc. et al.* v. *Texas*, 439 U.S. 803, 58 L.Ed.2d 96, 99 S. Ct. 58 (1978).

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CHAPTER 3

LAW OF INTERSTATE PLACEMENTS[1]

The interstate placement of children is a practice of obscure and virtually unexamined legality. In practice, courts and executive agencies, through official decisions and informal concurrence, send children across state boundaries for placement in facilities and institutions far from their home communities. Basic questions concerning the legality of this practice seldom appear to have been asked. Do courts and executive agencies have authority to send children out of their home states? Even if legislatures have granted such authority, are there constitutional impediments to the practice? What certainty do sending states have that their out-of-state placement orders will be honored in receiving states? What continuing legal control, beyond mere cessation of payments, can a sending state exercise over a child receiving residential care in another state?

The law of interstate placements easily divides itself into two parts. One part, considered in this chapter, involves the few court decisions and statutes which touch issues related to interstate placements. The second part is composed of interstate compact provisions which attempt to regulate the practice of interstate placements. The principal compacts--the Interstate Compact on the Placement of Children, the Interstate Compact on Juveniles, and the Interstate Compact on Mental Health--are discussed in Chapter 4.

THE CONSTITUTIONAL SETTING

In recent years, the interstate placement of children has come under the scrutiny of federal courts. Courts are being asked to rule on the legality of state practices which result in the placement of children from one state in institutions located in another state. One recent case, Gary W. et al. v. State of Louisiana, which has received wide attention, resulted in the removal of all Louisiana children who had been placed in Texas institutions.[2] Gary W. was a class action on behalf of Louisiana youth who had been placed in residential facilities in Texas, either by the direct action of Louisiana state officials or with the financial support of the Louisiana state government. The plaintiffs claimed that the Texas placements deprived them of treatment rights to which they were entitled under the U.S. Constitution and federal statutes and, further, "the mere fact of their placement in out-of-state facilities is itself a denial of adequate treatment and therefore violates federal statutory and constitutional rights."[3]

To support their claim that out-of-state placements were per se illegal, the plaintiffs asserted that the:

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> primary objective of institutional treatment must be the reintegration of children into their families and home communities.... The family of a child placed in residential treatment in Louisiana has the opportunity to participate in the child's treatment program and life by visiting the child and having the child make day or overnight visits home.... When institutional care is required it should be afforded near the parent's home; its goals must be the return of the child to the home; and the placement of the child must be in accordance with the inexorable application of "least restrictive alternative:" that is, the kind of treatment that is both nearest the home and imposes the least of all possible restrictions on the child's freedom.[4]

The Gary W. court decided the case on "right-to-treatment" principles, an evolving concept of constitutional law. Cases involving the right to treatment are premised on due process and equal protection grounds and Eighth Amendment principles.[5]

Typically, these cases arise in situations where the state exercises custodial powers over an individual and restricts his liberties. The statutory rationale underpinning the state's assumption of custodial powers is the individual's need for some type of treatment, rehabilitation, or therapeutic services. For the most part, right-to-treatment cases involve mental patients, prisoners, and institutionalized juveniles.[6]

Where courts have held that individuals have a right to treatment, the right is approached as a quid pro quo: if the state justifies restrictions on an individual's liberties by his need for services, then the state must provide the needed services so long as the liberties are restricted. If the state does not or cannot provide the services, it loses its legal basis for restrictions upon the person's liberty.

The concept of the right to treatment does not necessarily encompass all legal challenges to interstate placements. Where interstate aspects arise in a right-to-treatment case, other peripheral issues, such as a court or executive agency's legal authority to make those placements, are likely to arise and overshadow the right-to-treatment issue.[7]

While the right to treatment has chiefly been used to assure an individual appropriate treatment without regard to state boundaries, the Gary W. case was an attempt to use the principle to withdraw children from placements. Even though the Gary W. court granted the plaintiffs relief, it did not hold that the right to treatment, federal law, or even the U.S. Constitution provides a blanket prohibition on out of-state placements. The Gary W. court held:

> What is required is that the state give thoughtful consideration to the needs of the individual, treating him constructively and in accordance with his own situation, rather than automatically placing in institutions, perhaps far from home and perhaps forever, all for whom families cannot care and all who are rejected by family or society.[8]

The court rejected the plaintiffs' claims that legal principles forbade Louisiana officials from placing children in Texas institutions and require them to place children in their own communities.

> But the a priori thesis that Texas and all other states than Louisiana are tainted must be rejected. Each child must receive proper care wherever that child is placed. What is proper must be determined separately for each child based on that child's personal attributes and needs. What is proper for a particular child includes consideration not only of whether the child should be placed in an institution or treated in the community; it also includes consideration of the kind and geographic location of the institution or place of treatment.[9]

The _Gary W._ court's refusal to issue a blanket prohibition on out-of-state placements is consistent with other decisions that examine an individual's right to association with family and friends. Although premised on other constitutional grounds than the right to treatment, these other cases examine how far a state may go to remove a person-in-custody from family and friends.

Much court action, particularly in the criminal and juvenile areas, necessarily involves interference with family relationships. Dependency and neglect statuses presume that a court must interfere with a child's family relationship for his own protection. Yet, some recent challenges to judicial and bureaucratic actions have been partially on interference with family relationships.

One early mention of the notion of a right to family and friends appears in _In re Gault_, where the conditions that give rise to due process rights include confinement in institutions that remove a child from "mother and father and sisters and brothers and friends and classmates."[10] In the _Gault_ case, which did not involve interstate placement, the U.S. Supreme Court nevertheless held that where confinement deprives a child of family and friends, due process safeguards should not be denied. Similarly _Morales_ v. _Turman_ criticizes the use of Texas juvenile institutions that remove juveniles great distances from their home communities.[11]

While an individual's association with family and friends was not legally sufficient to determine the outcome of the litigation, some legal significance appears to be evolving.[12] For example, due process rights attach when the state brings dependency or neglect proceedings to affect a child's relationship with his parents.[13] Similarly, there is an increasing tendency to accord even to children some legal protection for their "imperfectly formed" relationship with a foster parent.[14]

To date, one case has clearly addressed the issue of "family and friends" in an interstate placement context. In a New York case, _Sinhogar_ v. _Parry_, the trial court clearly held that the family relationship is an interest protected by the due process clause.[15] Before the state can interrupt this family relationship by placing a child in another state, some procedural protection must be afforded this family interest.

The Sinhogar case involved placements of a number of New York children in Florida, New Jersey, and Virginia facilities. In granting due process protection, the trial court focused on the location of placement and its significance.

> The interest in the instant case is not the removal of the child, but where the child should be placed geographically, once there is removal from the home.[16]

As in the Gary W. case, Sinhogar proceeds on an assumption that some type of placement, resulting in the removal of a child from the parents' home, was necessary. This assumption sharply focuses the cases not on removal from home but on the geographic location of the resulting placement.

Geographic location, the trial court held, was significant because, in the Sinhogar placements, parental rights had not been terminated and, under applicable New York law, continuing associational obligations are placed on the parents for their children. Thus, the location of the placement affects a parent's ability to fulfill these associational duties. The Sinhogar trial court's opinion is interesting because it is the parents' obligations and not the children's associational interest with the parent which gave rise to due process rights.

As outlined by the trial court, the associational obligations of a parent under New York law which are affected by geography are:

- Continued parental legal guardianship.
- Consent to surgery.
- Consent to marriage.
- Consent to armed services enlistment.
- Legal representation of the child's interest.
- Plan for the child's future.
- Visit the child in placement.

For the last obligation (visiting the child in placement) under New York law, failure to visit or contact a child in placement can result in termination of parental rights on the grounds of neglect.

In summary, the Sinhogar trial court viewed the foregoing obligations:

> as evidence of the legislative recognition of the natural parent's continued role, participation, privilege and obligation with respect to the child's upbringing.[17]

Besides its views on the associational interests involved, the Sinhogar trial court ruled that the procedures used by New York officials in making the interstate placements denied the plaintiffs' due process rights and that, implicitly, their rights to treatment were also denied.

The New York officials appealed this lower court finding to the New York Appellate Division. On review, the Appellate Division held that due process was adequately protected by the existing review procedures accorded by New York law to foster care placements and that, for foster care placements at least, any "treatment" accorded to a child was limited as much by legislative determinations as by a child's needs.[18]

Regarding due process requirements, the Appellate Division first outlined the several review procedures which it considered to be constitutionally adequate. Citing two recent U.S. Supreme Court cases, the Appellate Division wrote:

> New York's review procedures are more extensive than those found acceptable in Parham or Smith, especially since the ICPC mandates independent review procedures by both the sending and receiving state. While it is conceded that not all of ICPC's requirements were met, such non-compliance, which may, as already noted, give rise to liability, does not imply inadequacy of the review and challenge procedures themselves.... We recognize, of course, that New York's review procedures fall short of providing the type of review and challenge which plaintiffs seek. They advocate a pre-placement hearing to determine whether out-of-state placement is in the child's best interest, whether it would produce undue hardship and whether equivalent facilities are available within the state.
>
> A review procedure is not constitutionally defective, however, merely because alternate proposals might offer more elaborate or comprehensive review mechanisms. Due process is satisfied if the procedure adequately safeguards any interest which is constitutionally protected. We find that New York, in its assumption of the parental role, has adequately protected in terms of due process, whatever interests the child or the parent might have.[19]

As to the right-to-treatment claims, the Appellate Division reviewed distinctions between the situation of delinquents, PINS (Persons in Need of Supervision), and foster care children. The Appellate Division wrote:

> Since children in foster care, such as plaintiffs, do not have the same need of rehabilitative treatment for anti-social behavior as a delinquent or PINS child and cannot be subjected to the same degree of deprivation of liberty, such as a commitment to a training school or secure facility, a rational basis exists for the statutory distinction between the delinquent or PINS child's right to rehabilitative treatment and the foster child's right to basic care.... We hold, therefore, the plaintiff's rights are limited to the programs the legislature has made available and the existence of a bona fide treatment at the foster-care facility.[20]

Other aspects of the Appellate Division's opinion are particularly significant for legal issues surrounding interstate placements. Like the Gary W. court, the Appellate Division indicates that the mere crossing of a state boundary does not have compelling legal significance. In its discussion of the impact that interstate placements have on a parent's visitation rights, the Appeallate Division wrote:

> Although many factors affect visitation, of which distance and the availability of travel funds and mass transportation are only a few, the mere crossing of a state boundary is not determinative.[21]

This statement, as well as the Gary W. holding, suggest that state boundaries, per se, are of little legal significance in a court's evaluation of the legality of an interstate placement.

The second feature of the Appellate Division's Sinhogar opinion which is of particular interest is its use of the Interstate Compact on the Placement of Children (ICPC) as a source of legal authority for officials to make placements. The plaintiffs argued that their placements were in violation of a specific New York law. The Appellate Division read the ICPC, also predicated on statutory enactment, as authorizing the interstate placements. To the Appellate Division, the ICPC is both a procedural mechanism and an authorization for interstate placements. Yet, in none of its holdings does the Appellate Division reject the emphasis placed by the Sinhogar trial court on the associational interests of the parents and children. The Sinhogar decision may be useful authority in other states for clarifying the state's interstate placements, despite ambiguities that may be found in other statutes.

Two recent decisions of the U.S. Supreme Court were handed down that will affect the development of the legal notion of family and friends. In the two children's mental health commitments cases, Parham v. J .R. and Secretary of Public Welfare v. Institute of Juveniles, the Court discusses the relationships and interests to be considered in mental health commitments.[22] Unlike the Sinhogar decision which focuses on a single party's interest in retaining a close tie between a parent and child, these two cases suggest a tripartite analysis of interests: those of the child, the parent, and the state. These cases are premised on a possible dichotomy between a parent's and child's interest because the decisions arose to challenge the action of parents in committing their children. Obviously the family relationship is not discussed as a child's right. Nonetheless, the decisions may be useful in developing the protected family-and-friends concept. The Court acknowledges that these parental interests have a primacy over the state's relationship to a child. In the context of interstate placements, such discussion is suggestive that not only can a child object to an interstate placement because of its impact on the parent-child relationship, but a parent also can interpose an objection on the same basis.

STATUTORY AUTHORITY FOR COURT-ORDERED OUT-OF-STATE PLACEMENTS

Most juvenile court statutes provide a wide range of dispositional options, regardless of the type of adjudication. Typically, the court is given options ranging from home placements to institutional commitments. Also, typically, these dispositional alternatives are not identified by any geographical limitations restricting court placements to within state borders.[23]

Can a court commit a youth to an out-of-state facility without specific statutory authorization? The few older court decisions on the question do not permit courts to make such placements, while the more recent decisions tend toward construing court dispositional authority as broadly as possible in these situations. One 1947 Missouri case, In re Church, held that a court could not commit a youth to an out-of-state institution under a statute that was ambiguous on the point.[24] Similarly, a former Michigan statute was interpreted by the state attorney general to preclude out-of-state placements.[25] One Pennsylvania court, without reference to a specific statute, held that:

> the action of the (trial) court placing (the child) under the jurisdiction and subject to the control of laws of another state and in the control of an institution not responsible to the court making the order or the laws of this Commonwealth, cannot be sustained.[26] (Parenthetical material added)

More recent cases, however, decided under statutes just as nonspecific as those considered by the Michigan attorney general and the Church court, take more expansive views. Three recent cases involving out-of-state placements give broad interpretation to their courts' authority to control placements.[27]

The statutory authority to place a youth in "some other suitable place" is a dispositional power common to juvenile court laws. "Suitable" might be construed to include or exclude out-of-state placements. Two cases have held that a juvenile court may make out-of-state placements under this statutory wording. In Reyna v. Department of Institutions, Social and Rehabilitation Services, an Oklahoma court construed its powers to place a dependent child "in the custody of a suitable person elsewhere" to give it authority in choosing between homes in Texas and in France.[28] One interesting feature of this case is the court's possible concern that a significant difference existed between the two competing placements. It would surely lose continuing jurisdiction over the child only if the placement were into the French home. The court nevertheless decided to place the child in the French home when it was determined to be a better placement, in the court's opinion, to the other options presented.

The second case involved a Georgia statute that permitted placements with "some other suitable person." Georgia had enacted the Uniform Juvenile Courts Act which, in addition to placement with other suitable custodians, also has specific provisions authorizing out-of-state placements.[29] The court, in In re A.S., permitted the placement, holding that either statute was sufficient to legitimize the court order.[30]

Statutes with Specific Geographic Limitations

Since juvenile courts are creatures of statute, their dispositional authority is based on the construction of statutory wording. The specifics of each state's statutes, therefore, are important in understanding out-of-state placement authority. For the most part, dispositional statutes are silent on the question of geographic limitations; a few states, however, do have relevant laws that circumscribe the dispositional powers of juvenile courts in geographic terms.

Indiana is unusual in limiting a court's dispositional powers to either institutions "situated in the State of Indiana" or to "child placing agencies in the state."[31] The one exception to these geographic limitations occurs when an Indiana court is requested to approve a guardian's request for a change of a ward's legal residence to another state.[32]

Although courts in many states may place children out of state on their own authority, executive agencies normally may not do so without court approval. Authority requiring juvenile court approval for out-of-state placements may be found in Idaho, Utah, and Wyoming.[33] In these states, even if the juvenile court commits a youth to a local private agency which later decides to place the youth out of state, the agency must return to the court and obtain consent to the out-of-state placement.

Statutes with Specific Authority to Place Out of State

States that have enacted the Uniform Juvenile Courts Act, or variations of it, such as Georgia, Louisiana, North Dakota, and Tennessee, permit their courts fairly wide and detailed authority regarding out-of-state dispositions.[34] Portions of the uniform act attempt to address the problem presented when the family of a child who is under the court's jurisdiction plans to relocate in another state.

The uniform act also permits a court to make out-of-state placements to a "suitable person in another state."[35] An interesting feature of this provision is that, if the other state has also enacted the uniform act, the sending court may request the juvenile court in the receiving state to assign a probation officer or other official to supervise the child in placement. No mention is made here regarding the use of interstate compacts. As a matter of practice, reciprocal supervision usually takes place in most states through a compact, regardless of the adoption of the uniform act and despite the authority of the courts to make such placements directly. However, there are numerous instances of court-ordered placements which avoid state procedures that were adopted to implement transfers under existing interstate compacts.

A third feature of the uniform act is the power given to receiving state probation officers and other officials to visit, counsel, control, direct, apprehend, and return children to the court of original jurisdiction. This last provision of the uniform act is, in effect, a grant of comity to cover the discretionary decisions of the receiving state probation officers related to juveniles who have not been adjudicated by local courts.

Oregon has one of the more detailed statutes authorizing out-of-state dispositions.[36] The Oregon statute permits such placements when:

(1) There is an applicable interstate compact,
(2) There is an agreement with another state, or
(3) There is "an informal arrangement" with another state permitting the child to reside there while on probation or under protective supervision, or to be placed in an institution or with an agency in another state.

The Oregon statute also contains the significant limitation that different legal categories of juveniles cannot be commingled in out-of-state placements to an extent greater than that permitted under Oregon law. This provision should be of considerable interest to other states, given current attempts to legislate a standard of "least restrictive environment."

A common statutory provision, found in many state juvenile codes, permits juvenile courts to place children out of state if the circumstances there are comparable to what the courts would expect in their own states. For example, some states require that the out-of-state facility be licensed by an agency in the receiving state "analogous" to the agency which licenses such facilities in the sending state.[37] Missouri juvenile courts are permitted to place juveniles in out-of-state associations, schools, or institutions, if the agency in the receiving state overseeing the importation of children gives its approval.[38] North Carolina permits its juvenile courts to place out of state where it will result in the return of a nonresident child to his home state.[39]

EXECUTIVE AGENCY AUTHORITY FOR OUT-OF-STATE PLACEMENTS

Similar to statutes affecting juvenile court powers, those laws authorizing local and state executive agency placements seldom mention geographical limitations. As an example, Nebraska's Department of Correctional Services is permitted to "use other public facilities or contract for the use of private facilities for the care and treatment of children in its legal custody."[40] Whether this permits out-of-state placements is not clear, but it is the typical phrasing in statutory descriptions of executive placement authority. Curiously, Nebraska has some subsequent statutory language which seems to indicate that out-of-state placements are authorized or, at least, not forbidden. Still referring to the Department of Correctional Services, the statute continues: "Placement of children in private or public facilities not under its jurisdiction shall not terminate the legal custody of the department." This wording still contains ambiguity: the reference to "not under its jurisdiction" might signify geography, or the department's lack of authority over private facilities, or a division of authority between several state departments, each having some responsibility for services to children.

Another Nebraska statute regarding the Department of Correctional Services has a specific reference to placements in other states. In this statute, the department is authorized to place a person in an institution "in another jurisdiction" or "to an out-of-state institution." Whether these two phrases should be read _in pari materia_ (i.e., construed together) is not clear, but it

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is probably safe to assume that the lack of clarity on this point in the first statute gave rise to the latter statute.[41]

Reference to out-of-state placement authority may be clear or ambiguous. In Louisiana, the Division of Youth Services, Department of Health and Human Resources, in developing a regional system of child care institutions, is directed to establish them "in or near places in the state."[42] Vermont empowers the commissioner of the Department of Corrections (for delinquent children) and the commissioner of the Department of Social and Rehabilitation Services (for CHINS) to place children in "private or public agencies of the community where their assistance appears to be needed or desirable."[43]

Alaska and Connecticut have specific authority for executive out-of-state placements. Alaska's Department of Health and Social Services is empowered "to arrange for care of every child inside or outside the state.[44] This authority appears consistent with the historical evolution of social services delivery in that state. Before and since statehood, Alaska has availed itself of facilities in the "lower 48," particularly in California, Colorado and Washington. Connecticut authorizes the commissioner of the Department of Children and Youth Services to transfer children "to any appropriate resource or program administered or available to the department . . . within or without the state under contract with the department."[45] The commissioner of the then Department of Social Services is given authority to "make reciprocal agreements with other states and with agencies outside the state in matters relating to the supervision of the welfare of children."[46]

Michigan is unusual in that an executive department is authorized to "place a state ward in a public or private agency incorporated under the laws of another state or country and approved or licensed by the other state or country," an obvious recognition of its proximity to facilities in Canada.[47] Missouri's Division of Youth Services, Department of Social Services, is authorized to place children out of state, when it appears that plans for a child's rehabilitation have been made in some other state and the parents and director of the Missouri department give their approval to such placement.[48]

Delaware's Division of Social Services, Department of Health and Social Services, is given limited out-of-state placement authority when it concludes that a dependent child is improperly placed. Although not specified, it appears that this power only applies to children who were brought into the state under its importation statute.[49] In other words, this appears to be a replacement authority only.

EDUCATIONAL PLACEMENTS

Unlike statutes concerning juvenile courts and juvenile corrections agencies, statutes dealing with education authorities more commonly address the issue of interstate placement of children in a very direct fashion. The education statutes more frequently address the two central legal issues of interstate placements: the authority to make interstate placements and the legal procedure used to make the placements. In state education codes, it is common to find clear statements of whether such placements can be made, and the legal method appropriate to effect the placements.

For the most part, these statutes focus upon the educational needs of "special" children, variously described as developmentally or learning disabled, handicapped, visually impaired, blind, deaf, or exceptional. The more recent statutes appear to be written following the stimulus of increased federal interest in the special educational needs of these children.

Statutes of Receiving States

One category of education statutes includes those older traditional laws establishing state-operated schools for deaf and blind children.[50] For the most part, these statutes contain provisions for receiving children--they describe the circumstances under which out-of-state children might be received into in-state institutions, either public or private, which operate their own schools. Most of the older statutes clearly permit out-of-state children to be received.[51] Some state laws are ambiguous on the point.[52] A few states prohibit state schools from receiving out-of-state children.[53]

For the majority of statutes which permit out-of-state children to be received, two conditions are commonly required for out-of-state admissions. First, a contract regarding tuition must be made. Second, an out-of-state child may be received only if his admission does not displace an otherwise qualified in-state child.

The admissions statute for the Arizona School for the Deaf and Blind is typical in its requirements.

> A. . . . persons who are not residents of the state may be admitted to the school if its capacity will permit, but no person shall be received into or retained in the school to the exclusion or detriment of those for whom it is especially founded.
> B. Children from other states and countries may have the benefit of the school by complying with the conditions of admission for state citizens and by advance payment to the superintendent of an amount fixed by the board.[54]

Curiously, only one of the modern education-for-the-handicapped statutes directly addresses the question of receiving out-of-state children into private education programs. The Maine statute reads:

> Any other state or subdivision thereof, or any private person, firm or agency may contract with any private school in the State to provide special education for children who are not residents of this State.[55]

Statutes of Sending States

A few statutes affecting state schools for the blind or deaf contain sending authority, as well as the authority to receive children from other states. Arkansas' statute is an example.

> The Arkansas School for the Blind, is hereby authorized to expend available funds for the purpose of sending children under the age of 21, who are deaf as well as blind, for which there are no facilities for education in this state, to any school, institution, or other place outside the State of Arkansas providing a qualified program of education for such children.[56]

Only a few of these older statutes authorized such sending of children out of state. Modern special education laws, however, reflect just the opposite trend. The dominant characteristic of these laws is that they generally broaden the oppotunities for utilizing out-of-state schools. Statutes within this group, usually described as "special education" statutes, typically cover broad classifications of children with special educational needs within the public school systems. The children covered by this category frequently include the same types of children previously discussed; namely, exceptional, developmentally or learning disabled, special needs, mentally retarded, autistic, and emotionally, physically, or mentally handicapped.

The statutes in this category basically address sending, not receiving, authority. Most of the statutes authorize state education departments to send children to out-of-state schools. Because special education statutes are enacted specifically to extend a state's obligation to provide education to all students, including handicapped children, the likelihood of interstate placements increases in these cases. The very existence of these laws suggests an apparent recognition that the special needs of some handicapped children might not be met by the educational resources available within a particular state. Thus, in most special education statutes, some provision is made for out-of-state placement authority.

Twenty-eight jurisdictions authorize out-of-state placements for special education. The Alaska statute provides an example.

> The identified exceptional child may be sent out-of-state for special education if the child resides in a district or school attendance area where the education program offered is not appropriate for the needs of the child and if the Commissioner of Education determines it is not feasible for the child to be enrolled in a special program in the state.[57]

These sending statutes have several similar characteristics. The most common one is that they contemplate a contractual approach to accomplish the placement. Rhode Island's statute is an example.

> For the purpose of providing such care, maintenance and education, the said department of education shall have power to contract with any institution having or furnishing facilities for such care, maintenance and education of blind children in this or any other state at the contract price within the amount appropriated therefor.[58]

The use of contracts as the legal mechanism for interstate placements is noteworthy because it contrasts with the approach found in the juvenile court statutes. What juvenile courts attempt to accomplish through court orders, with concommitant ambiguities concerning comity, and full faith and credit, education authorities achieve by the straightforward legal mechanism of contract. This contractual approach is consistent with the historical pattern adopted in education statutes to deal with many other interstate problems. It is found, for example, in state education laws providing for contracts between school districts in different states which have a contiguous state border to build or operate joint school districts or to make tuition payments.[59] The contractual approach is also found in the traditional statutes, discussed above, permitting out-of-state children to attend state institutions for deaf or blind children.[60]

The second most common characteristic of the special education laws is the required involvement of state agencies in the process. State education departments may simply be mandated to promulgate rules and regulations which local education officials must follow;[61] it may limit authority to make the placement to the state agency;[62] or it may be that the state agency must approve the proposed out-of-state program, facility, or curriculum.[63] This third aspect, which could have ramifications in such other areas as the licensing of out-of-state child care facilities, is largely unexplored and without developed legal authority.

Most state involvement in interstate special education placements is obviously through state departments of education. Rhode Island, however, has a curious statute which, in addition to placements through the state department of education, also authorizes the governor to make such interstate placements.[64]

Less common characteristics of these special education statutes are limitations of out-of-state placements to only out-of-state public institutions[65] or to out-of-state private institutions.[66]

Twenty-one statutes (perhaps reflecting incipient notions of "family and friends") require participation by a child's family in an interstate placement decision.[67]

Some states' special education statutes do not directly address the question of interstate placements. The Arizona statute is an example.

> A school district or county school superintendent may contract with and make payments to, other public or private schools, institutions and agencies approved by the division of special education, within or without the district.[68]

Such statutes as this are simply ambiguous on the question of interstate placements. There is no clear legal doctrine which provides a definitive resolution of the issue. Necessity, however, would dictate that each state would resolve the question of enablement in one way or the other.

There is a certain irony which emerges when federal and state policies are examined, each within the context of the other. The federal law underpinning these modern state statutes is frequently described as intending to "mainstream" exceptional children, to treat them as any other children. The means of accomplishing that objective was to require school districts to be financially responsible for educating all children within their jurisdictions, regardless of the difficulties or handicaps which certain children might possess.[69] Yet, the resulting state laws implementing these federal objectives have resulted in clarifying and establishing clear authority for handicapped children to be sent out of state.

Prohibitory Statutes

A few statutes limit education agencies' authority by preventing out-of-state placements for special education. Alabama's statute establishes the limitation by prohibiting funds from being spent "for training and education outside the State of Alabama."[70] The Missouri statute also establishes a limitation for both local and state education agencies.

> If the board of education of the district finds that no adequate program for handicapped or severely handicapped children is available in nearby districts or through public agencies, it may contract with non-profit organizations within the state. . . . If the state board of education finds, after investigation by the state department of education, that no adequate program for the handicapped or severely handicapped children is available in nearby districts or through public agencies, the state board of education may contract with non-profit organizations within the state.[71]

LICENSING STATUTES

Licensing is the predominant method used by states to obtain information and apply standards to the care which children receive in placements outside their own family homes. There is an enormous variety of licensing statutes among the states.[72] Childcare facilities, foster homes, group homes, boarding homes, maternity homes, orphanages, and mental health facilities are typical subjects of the states' many licensing laws. These statutes describe the regulations as licensing, permission, inspection, certification, or approval. These terms are usually employed by legislatures with great discrimination, to either require certain agencies to conform to or to avoid administrative regulations within the state. For example, education departments "certify" school programs in residential institutions which they do not "license." In states where corrections and social services are delivered by different state agencies, group homes for delinquents are "approved," because only the social services agency can license.[73] The procedural characteristics of these statutes, however, are quite similar. They typically include inspection, reporting, and the application of standards. Most licensing statutes apply to facilities; some apply to facility operators.[74]

A principal characteristic of most licensing statutes is that they are directed at facilities within the licensing state's boundaries. The apparent statutory objective is to regulate child care within the licensing state.

This intrastate orientation can be found even in the federal legislation which is related to some of the childcare licensing activities of the state. In the federal law establishing AFDC-Foster Care categorical assistance, the emphasis is entirely intrastate. Section 608 reads:

> The term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing.[75]

By far, the most common provision of state law that interrelates out-of-state placements and licensing is found in state legislation implementing the Interstate Compact on the Placement of Children (ICPC). Virginia's law is typical and provides that:

> Requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state set forth in Chapter 10 (63.1-195 et seq.) (child care facilities licensing) of Title 63.1 shall be deemed to be fulfilled if performed by an authorized public or private agency in the receiving state pursuant to any agreement entered into by appropriate officers or agencies of this State.[76]

This provision, or one comparable to it, has been passed by states which have adopted the ICPC.[77] The provision permits a state to delegate its "visitation, inspection or supervision" responsibilities to out-of-state public or private agents. What is left unclear is whether such delegation also includes the application of the sending states' standards to out-of-state facilities. To the extent that it does, this provision amounts to a "license" by the sending state for out-of-state facilities. In actual practice, this delegation of authority is deemed to be satisfied if the receiving state's licensing standards have been satisfied by the receiving facility. In some instances, administrative regulations may require out-of-state facilities to meet certain standards of the sending state before placements can be effected. These factors are usually enumerated in the contract for payment.

A few states have licensing statutes that, in part, are directed at some aspects of interstate placements. The Wisconsin attorney general has offered the opinion that, under Wisconsin licensing statutes, out-of-state licensing was not authorized.[78] This reflects the common limitations of state licensing laws to wholly in-state activities.

South Dakota's licensing law applies to some out-of-state agencies. Its statute permits the Division of Social Welfare, Department of Social Services, to "issue a license to any such agency that is placing more than one child in the state provided that such agency conforms to the established standards of care."[79] Connecticut has a similar statute. New Hampshire and Nevada extend the reporting requirements of their licensing statutes to out-of-state children placed within their states.[80] Similarly, Oklahoma and Oregon specifically provide that out-of-state corporations involved in placing children must comply with their state licensing procedures.[81] Each of these licensing statutes is designed to encompass interstate placements; however, they are fundamentally receiving-state statutes. They clarify only that out-of-state children who come into the state are accorded the full protection of the receiving-state's licensing laws.

MENTAL HEALTH COMMITMENTS AND TRANSFERS

Court mental health commitments and placements by public mental health agencies have several common characteristics regarding interstate placements. As in juvenile court and juvenile corrections statutes, some mental health statutes have specific out-of-state placement authority;[82] some limit placements to within the state;[83] and some are ambiguous.[84]

The interstate provisions most common to state mental health laws are the expressed authority to send nonresidents to institutions in their home-states and to send persons to mental health facilities "within or without the state" operated by the U.S. Government (principally the Veterans Administration and the Public Health Service).[85]

Illinois is unusual in that it specifically provides (without benefit of a compact) for the application of its mental health licensing standards to out-of-state facilities.

> Whenever the Department pays the cost, directly or indirectly, in whole or in part, for care or treatment of an Illinois citizen to a facility located in another State, such facility shall be required to be licensed by that state and shall also meet the minimum standards as are imposed by the Illinois laws and regulations for comparable licensed facilities within Illinois.
> Whenever an Illinois citizen is placed in such a facility, the Department shall ensure that the requirements as contained in Section 15 of this Act are complied with, as applicable. The responsibility of the Department shall not be dependent

> upon its paying, directly or indirectly, in whole or in part, for the person's care, treatment or other services, as required, but rather arises from the placement of such person in a facility located in another state pursuant to Section 15 of this Act.
> The fact that the facility is state-licensed and meets the minimum Illinois standards must be affirmed in writing by the Department of Mental Health to the parent, guardian or nearest responsible relative before placement is made. The Department shall also affirm in writing that placement in such facility is in the best interests of the person to be placed, and there are presently no suitable facilities in the State of Illinois in which said person can be placed. Three months subsequent to placement of any person, the Department shall send copies of visitation reports made pursuant to Section 15 of this Act to said person's parent, guardian or nearest responsible relative.[86]

This statute is remarkable in its clarity that the Illinois standards of care are applicable to placements in other states.

RECOGNITION OF DISPOSITIONAL ORDERS OF COURTS IN OTHER STATES

Whether or not judges and other officials have specific statutory authority to make out-of-state placements, such placements are made. Beyond the basic question of the authority to make these placements, other questions arise concerning the legal effect of such placements. Are the orders of a sending state enforceable in the receiving state? Must a receiving state accord recognition to subsequent orders from the sending state? Such questions raise many unresolved legal issues in the areas of comity, the constitutional principle of full faith and credit, and conflict of laws.

Modern decisions tend to ignore these questions and resolve cases on other grounds. In one case, State ex rel. Juvenile Department of Multnomah County v. L., the Oregon Court of Appeals brushed aside the question of out-of-state enforceability.

> Any question concerning the court's authority to exercise continuing jurisdiction over L. by ordering her placement in the Chazen Institute [an out-of-state facility] is put to rest by the legislature's 1973 amendment to ORS 419.507 which provides:
>
> > "Commitment of a child to the Children's Services Division does not terminate the court's continuing jurisdiction to protect the rights of the child or his parents or guardians.[87]

Older cases, rather than treating the legality of out-of-state placements as problems of statutory authorization, more directly addressed these issues. Two such cases, which reached opposite conclusions, grew out of marriage disputes which challenged the placement of children with out-of-state custodians.

The earlier case, Comm. ex rel. Lembeck v. Lembeck, involved a Pennsylvania court which placed a child in a New York institution. One of the parents challenged the order's legality on the basis "that the child has been committed to an institution not within the jurisdiction of the court and that, therefore, the order is unauthorized and legally inoperative." The appeals court agreed with the parent and held that:

> It may be stated as a general proposition that no state can exercise jurisdiction by judicial process or otherwise over persons or property outside its territorial limits. There are certain exceptions to this rule not relevant as applied to the case under consideration. Little discussion is necessary to show that the institution to which this child was committed is not subject to the jurisdiction of the court making the order. It is not bound to comply with the order, nor if it undertakes so to do is it subject to the control or direction of the court with reference to the manner in which the appointment shall be exercised. The authority of every tribunal is restricted by the territorial limits of the state in which it is established and any attempt to exercise authority outside of those limits must be regarded as an illegal assumption of power. (Pennoyer v. Neff, 95 U.S. 714.) The child in this instance is in a sense a ward of the court; she is within the State of Pennsylvania; she is entitled to the protection which the laws of this State give her, and while the order was doubtless made wholly in the interest of the child and with regard to her welfare, the action of the court, placing her under the jurisdiction and subject to the laws of another state and in the control of an institution not responsible to the court making the order or the laws of this Commonwealth, cannot be sustained. As no tribunal established by this State can extend its process beyond its own territory so as to subject persons to its decisions, the result of the order complained of is to place the child in an institution over whose management the committing court has no control and to remit the contending parents to a foreign jurisdiction for determination of a question lawfully submitted to a court of competent jurisdiction.[88]

However, in a case contemporary to Lembeck, a different conclusion was reached. A child was judicially ordered to live with an out-of-state third party as part of a divorce proceeding. One of the child's parents challenged the order in the absence of any statutory authority in New Hampshire for out-of-state placements. The court rejected this challenge, but considered as relevant whether the court might lose jurisdiction over the child by placing the child out of state.

> Defendant's contention that the policy of the law to make effective its decrees is of controlling importance is without merit. The hazards of ineffective enforcement arising from the mere change of a ward's residence to another state are not such as to prevent the court from giving fullest force and consideration to the child's greatest welfare, which, as we have seen, is always the paramount and determining factor. . . . It is unnecessary whether a decree for the custody of a minor . . . is a judgment within the protection of the full faith and credit clause of the Federal Constitution . . .; it is sufficient that, under the principles of comity customarily exercised among the states, the courts of each will give appropriate force to the official character of a custodian appointed in another state and recognize him, in the absence of changed conditions.[89]

Comity

Comity is the legal principle that permits the courts of one jurisdiction to recognize and enforce rights established in another jurisdiction when there is no overriding reason for not giving such recognition. These rights, in most states, will only be enforced under comity principles after claims between the contending parties have been resolved and reduced to judgments.

Comity is not based upon constitutional law, but is an out-growth of common law and international law doctrines which define the inherent powers of courts and legislatures.[90] When legislatures statutorily define the recognition that courts may accord to out-of-state judgments, they have legislated rules of comity.

An example of comity legislation that is applicable to the out-of-state placement of juveniles is the Uniform Child Custody Jurisdiction Act. A principal motivation for drafting this act was the desire to reconcile conflicting decisions that emerged among the states. These cases involved the recognition of foreign child custody determinations arising from divorce and other post-marital disputes.[91]

The act recognizes an out-of-state judgment determining child custody if:

- The state in which the deciding court sits is the child's home state;
- The child and another party to the issues have a significant connection with the state in which the deciding court sits and there is available substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

- The child is present in the state in which the deciding court sits and there is an emergency requiring the court to take action for his protection; or

- No other state could legally take jurisdiction.

The significance of this act for the out-of-state placement of children is that it provides an orderly set of rules which permits courts of a sending state to anticipate what recognition will be given to its orders in a receiving state. Nineteen states have enacted this uniform act.[92]

Another statutory basis for the extension of comity to interstate placements can be found in child import/export statutes. These statutes, discussed in detail below, are found in a majority of states. While no case law was found describing them as legislative grants of comity, the effect is to provide grants of comity to interstate placements.

The clearest example is the Wyoming importation statute, which is applied to every "person, firm, partnership, corporation, state or political subdivision or agency thereof" bringing or sending children into Wyoming. For interstate placement decisions to be recognized in Wyoming, officials in other states must only comply with Wyoming's notice and reporting requirements. Wyoming is unusual in the specific reference to governmental placements in its importation statute. Another interesting feature of the Wyoming law is its implied exemption from penalties for officials who fail to comply with the requirements of the importation statute.[93] While the importation statute includes "state or political subdivision or agency thereof," the statute's correlative penalty provision reaches only "person, firm, or corporation."

Another statutory area where rules of comity have developed which affect interstate placements may be found in the appointment of guardians. While the development of comity principles applied to guardians and wards has occurred independently of the import/export statutes, both sets of principles may be equally applicable to situations involving interstate placements. This is likely because the parties involved in interstate placements will typically have a guardian status of one type or another. However, it is difficult to consistently conclude that comity rules apply in these situations because of the diverse meanings attached to the phrases "guardian and ward" and "ward of the court."

In most states, a youth can become a "ward" by court order following either of two judicial procedures. One process is by application to a probate court by a third party for letters of guardianship. Typically, these are special statutory proceedings independent of delinquency, status offense, neglect, or dependency proceedings. The second court process resulting in the appointment of a guardian for a child involves juvenile court proceedings. Typically, an adjudicated delinquent or dependent child is referred to as a "ward of the court" and the person or facility receiving custody may be designated his "guardian."

The rights and duties for the care and custody of a child imposed on a guardian under either process are not significantly different. What is not clear, however, is whether the guardianship of wards placed out of state is identical to in-state appointments under each procedure.

One case, *Pfortenhauer* v. *Hunter*, illustrates a type of situation where a court will recognize a guardianship established in another state. After denying the applicability of an interstate compact as a vehicle for returning the ward to Nevada, the Oklahoma Supreme Court observed that:

> The guardian voluntarily invoked the jurisdiction of the Nevada court. She sought and obtained letters of guardianship and accepted the trust and responsibility the Court reposed in her to faithfully execute her duties as guardian. She is now estopped from denying the jurisdiction which she invoked. . . . Neither is she able to divest that court of jurisdiction over the guardianship by removing herself and the child from the territorial limits and refusing to return because her removal from Nevada was fraudulent.[94]

Where an out-of-state facility accepts a placement from a court and is appointed guardian, the principle suggested by the Oklahoma Supreme Court might be applicable to subject the facility (as guardian) to orders from the sending court, i.e., the voluntary acceptance of the court's appointment as guardian of a child enables a court to continue its jurisdiction after the child has left the state. The jurisdictional principle of the *Pfortenhauer* case has been codified for all guardianship appointments in some states, for example, Ariz. Rev. Stat. Ann., Sec. 14-5208, and Neb. Rev. Stat., Sec. 30-2612. Both of these statutes specify that, by accepting an appointment, a guardian "submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person." A committee comment to the Nebraska statute explains the rationale for the statute.

> The "long-arm" principle behind this section is well established. It seems desirable that the court in which acceptance is filed be able to serve its process on the guardian wherever he has moved. The continuing interest of that court in the welfare of the minor is ample to justify this provision. The consent to service is real rather than fictional in the guardianship situation when the guardian acts voluntarily in filing acceptance.

Since this principle has only been applied in probate cases, there is no certainty that it is equally applicable in cases involving guardians appointed by courts in delinquency, status offense, dependency, or neglect cases.

Full Faith and Credit

The second principle that is applicable to out-of-state placement orders is the full faith and credit clause of the U.S. Constitution. This requires that judgments of a sister state's courts be accorded recognition. However, recognition and enforcement of a sister state judgment is required only to the extent that the rendering court had jurisdiction over the parties and subject matter when the decree was made, that the court satisfied the requirements of due process, and that the judgment rendered was a final order.[95]

This last point may be significant for out-of-state placements because, in the majority of cases, they may not be final decisions. Because juvenile courts normally regard their jurisdiction as continuing throughout the period of placement, the full faith and credit clause might not be available to require enforcement of the original decision in a receiving state.[96]

A major problem inherent in the application of the principles of comity and full faith and credit to juvenile cases is that neither principle is applicable to the enforcement of another jurisdiction's penal judgments, including such diverse court decrees as convictions for crimes and public attempts to enforce delinquent tax bills. Because the exact quality of juvenile court judgments is becoming increasingly ambiguous--whether they are criminal or civil--justifying out-of-state enforcement of these judgments on the principles of comity or full faith and credit may become increasingly untenable.

Long-Arm Statutes

"Long-arm statutes" is a term applied to legislation that permits courts to acquire personal jurisdiction over parties outside their states' boundaries. This extension of jurisdiction is based on the theory that events occurred within the state in which the court sits which involved the party in question, usually a civil defendant. Typical events that activate long-arm jurisdiction are contracts and torts.

The use of such statutes in cases of interstate placement appears to arise mostly from agreements between sending agencies and receiving facilities, specifying such provisions as financial arrangements, notice requirements, and methods for the return of children to the sending state.[97] If this type of agreement is approached merely as a contract, it is enforceable as any other contract. When applied to out-of-state placements, most long-arm statutes would give courts in the sending state jurisdiction over enforcement of the contractual terms.

The difficulty involved in this approach is that contracts for the transfer of physical custody over children might not be viewed by courts as ordinary contracts. It is not clear whether courts of general jurisdiction would accept such a case because of the contractual elements, or shunt the case to a juvenile court because custody of a juvenile was involved. One trend that further obscures the contractual elements in this situation is the willingness of some courts to recognize rights of children in the relationship that they form with foster parents.[98]

Besides the tendency for the custody and care issues to obscure traditional contractual relationships, another difficulty involves the applicability of contract remedies to situations involving breached agreements for child care. Contracts usually only give rise to money damages for their breach. In the case of a sending agency trying to enforce such contractual terms as "standards of care" or "return of custody," money damages would obviously be inappropriate. Return of a child could be effected, of course, by termination of payments, but improvement of standards could not be controlled through this method. The only other contractual remedy normally available would be a suit for specific performance of the contract.

Specific performance is an equitable remedy available when the remedy at law, i.e. money damages, is inadequate. It is a remedy invoked by courts only infrequently. When a court orders the specific performance of a contract, it requires a person to perform as promised in a contract. Contracts which can be enforced through specific performance typically involve the purchase and sale of real estate, heirlooms or other unique property. Typically, contracts for personal services are not granted the remedy of specific performance. If the contract between the sending agency and the receiving facility is not a contract for personal services, and if the standards of care or conditions giving rise to return of the child are specified in the contract, specific performance might provide a method to regulate out-of-state facilities. In effect, a court would order a receiving facility to comply with whatever standards or conditions are provided in a placement contract. Whether interstate placements involve personal service contracts or "unique" services would ultimately determine the availability of the remedy of specific performance.

One recent development in the application of long-arm statutes that might be useful for the enforcement of out-of-state placements is their extension to cases in the field of domestic relations. Within the last seven years, long-arm statutes, which traditionally have been used only for contracts and torts, have been increasingly applied to divorce, alimony, and custody proceedings.[99] Some states have expanded their long-arm statutes to give state courts very broad jurisdictional bases. Oklahoma, for example, provides that:

> (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's . . . (4) causing tortious injury in this state by an act or omission. . . .
>
> (7) maintaining any other relation to this state or persons or property . . . which affords a basis for the exercise of personal jurisdiction by this state consistently with the Constitution of the United States.[100]

A liberal long-arm statute such as this would permit a sending state agency to seek enforcement of an out-of-state placement contract in courts within the sending state.

ADMINISTRATIVE REGULATION OF INTERSTATE PLACEMENTS

Another type of statute common to many state codes simultaneously regulates the immigration and emigration of children. Typically, these statutes describe the regulated activity as "importation" and "exportation" or "bringing or sending into" and "taking or sending out" children. These particular words were probably used rather than immigration and emigration because the laws are not directed at the children but to the activities of their custodians. A few states have recently adopted the phrase "interstate placement" to describe the activities intended, which suggests that import/export statutes and interstate placement statutes are beginning to cover the same type of activity.[101] Throughout this discussion, however, references to import/export statutes are used simply for consistency and clarity.

The normal topics covered by these statutes include performance bonds; licensing, inspection, and reporting requirements by receiving agencies; and specific prohibitions against the importation of certain types of children.

Alabama's statute provides an example of the typical techniques of regulation found in these statutes. The first set of conditions listed gives the department authority to inspect proposed adoptive or foster parents' homes, and to receive information about the child from out-of-state agencies. Following these provisions, regulations for other placements are provided.

> No person or agency shall bring or send any child into the state of Alabama for the purpose of placing him or procuring his adoption or placing him in any child-care facility, as defined herein, without having first obtained the consent of the department. The department shall have the power to impose and enforce reasonable conditions precedent to the granting of such consent; and such conditions shall be for the purpose of providing the same care and protection for the child coming into the state of Alabama for placement or adoption as are afforded to a child who is born in the state of Alabama. . . .
>
> The department shall be authorized to make a thorough investigation of any child-care facility to which any child is being brought or sent to determine conformity to minimum standards prescribed herein for approval or licensing and to determine the suitability of such child-care facility for the care, supervision, training and control of said child; (6) in case said child, subsequent to being brought into the state of Alabama, becomes dependent, neglected, or delinquent prior to his adoption or becoming of legal age of majority, said child shall be subject to the provisions of chapter 7 of Title 13, Code of Alabama, 1940. . . .; (7) the child will be placed in conformity with the rules and regulations of the department; (8) the person with whom the child is placed shall be responsible for his proper care and training; (9) the department shall have the right of visitation and supervision of the child and the home or the child-care facility in which he is placed until adoption becomes final or the child becomes eighteen years of age; (10) the department may, pursuant to the provisions of this article, prescribe the conditions of an agreement or contract with the designated out-of-state agency, when a child is brought into the state of Alabama. The person

> or agency receiving the child in Alabama shall report to the department at such reasonable times as the department may direct, as to the location and well-being of the child, so long as he shall remain within the state and until he shall have reached the age of 18 years or shall have been legally adopted.[102]

The Alabama statute's requirements for notice and consent, inspection and standards, and reports are all typical elements of regulation found in import/export statutes. Such regulations are designed to involve the state's child-care apparatus in the care of all children within the state, regardless of their geographical origins.

Importation

By far, the most common regulatory statute germane to child protection circumscribes the importation of children. While these laws usually limit their coverage to cases of adoption, they are included here because of the ambiguity of the phrase "placement for adoption." The legal meaning of "placement for adoption" can be based on the intent of the party placing a child or that of the party receiving a child; it might be based on the legal status of the child or his relationship with his parents; or it could refer to the legal relationship between a placed child and the placing custodian.

In many "placement for adoption" statutes, the activities and persons to be regulated are specified, but not the place. In the case of a placement into a family's home, where all of the parties agree that a child will remain in the home and be adopted, and an adoption actually occurs, the situation is readily understood to be a "placement for adoption," based on the intent of the parties involved. In situations that involve orphanages and group homes, the intent might be to place the child until adopting parents can be found or until an adoption actually takes place. In South Carolina, the attorney general has interpreted that state's import law to apply only to placements subsequent to the termination of parental rights, "regardless of whether, where or when an adoption proceeding is actually begun."[103]

Activities Regulated

In reviewing state codes, it becomes obvious there was no single, national source from which importation statutes were formed. States have adopted a variety of language to describe the kinds of placements that are regulated, sometimes appearing in connection with laws which license foster homes and child-care facilities. Since there is no case law on the subject, it is impossible to conclude how similar or diverse the activities covered by the various statutes might have been intended by state legislatures. The following list summarizes the ways in which receiving states' activities are listed in the various importation statutes.

- Importation for placing or caring in any home or institution.[104]
- Importation for care or supervision.[105]
- Importation for placing him or procuring adoption or placing him in any child-care facility.[106]
- Importation for placing or boarding in a family or home with a view to adoption, guardianship, custody or care.[107]
- Importation to place in a foster home or procure an adoption.[108]
- Importation to place in foster care or possible adoption.[109]
- Importation to place in family home or for adoption.[110]
- Importation for placing in a private home.[111]
- Importation for placing or procuring placement in any free, wage, boarding home, or for purposes of adoption.[112]
- Importation to place in any home.[113]
- Importation to place in a family home.[114]
- Importation to give his custody to some person or procuring adoption.[115]
- Importation for adoption.[116]
- Importation for placing or procuring his adoption.[117]
- Importation to place in any family home with or without indenture or for adoption.[118]
- Importation for giving custody to some person, institution, corporation, or agency in the state or procuring its adoption.[119]

While these differences in language are quite small, the subtleties inherent in them could mean, in given situations, that a statute in one state might control the child's placement while, in another state, an identical case might be held to be outside the intent of the legislation.

Individuals Regulated

As in most regulatory statutes, the child importation statutes specify the individuals who are to be regulated. Some of the statutes attempt to be all-inclusive, reaching the broadest possible range of individuals. Typical phrasings for these laws are:

- Any person, corporation, association, or institution.[120]
- Any person, any public or private agency, corporation, or organization.[121]
- Any person, partnership, association, corporation, charitable agency, or other entity.[122]

These all-inclusive attempts at coverage may also be phrased in negative terms:

- No person.[123]
- No person or institution.[124]
- No person, agency, association, institution, or corporation.[125]

These various phrasings all indicate legislative intent to regulate broad ranges of individuals and entities involved in interstate placements. It is likely that they all reach the same groups of individuals.

Other child importation statutes contain qualifications limiting applicability to specified categories of sending agencies. Kansas, Missouri, and Nebraska limit the application of their importation statutes to "associations incorporated in another state."[126] Other phrases used are "a public or private agency of any state, accredited in such state for the placement of children,"[127] and "no person or organization except Delaware authorized agencies."[128]

Most of the importation statutes exclude interstate placements by relatives: relatives by blood or marriage, or relatives with specified degrees of kinship or relationship.[129] North Dakota excludes placements by relatives or guardians, provided the guardian is not an agency.[130] New Jersey excludes placements by relatives in their own homes, but if an out-of-state child is subsequently replaced, the normal import regulations apply.[131] Connecticut also excludes placements to any summer camp operating less than 90 days and to any educational institution.[132]

Exportation

A few states have statutes regulating the exportation of children. Almost all of them are in conjunction with importation statutes, giving both regulatory authorities to the same executive agency.

Activities Regulated

Similar to the importation statutes, the activities regulated are diverse and, because of the absence of case law, the exact activity reached by the export statutes may be broader than the statutory phrasings would suggest. The activities regulated in the exportation statutes are:

- Exportation for adoption.[133]
- Exportation to place in a foster home.[134]
- Exportation to place in a foster home or in a child-caring institution.[135]
- Exportation for foster care placement.[136]

Individuals Regulated

Again, similar to the importation statutes, different categories of individuals are regulated or excluded from regulation by the exportation statutes. Florida requires everyone except "an agency or the department" to comply with its exportation requirements; Minnesota excludes parents and guardians from exportation regulation; Nebraska also excludes persons with a "right to dispose" of a child.[137]

WHAT STATE LAW CONTROLS THE INCIDENTS OF INTERSTATE PLACEMENTS?

Once an interstate placement occurs, an implicit legal issue emerges as to whether the law of the sending or receiving state controls the incidents of the placement. When a youth is placed in another state, does he carry with him all the entitlements of the laws of the sending state or does he become entitled to only those benefits found in the laws of the receiving state?

Two simple examples highlight the issue. A youth is adjudicated as a delinquent child in state A and placed in a secure private residential facility in state B. Under legal regulations of state A, residential facilities are required to provide 30 hours of supervised instruction each week. Under legal regulations of state B, such a facility is required to provide only 20 hours of weekly supervised instruction. Is the delinquent youth entitled to 30 hours of supervised instruction, or is he limited to 20 hours?

The second example involves a mentally retarded youth who is determined by proceedings in state A to be "trainable." The youth is placed in a special school in state B. Under the law of state A, no provision is made for review of the placement. Under the laws of state B, such placements of mentally retarded children are required to be reviewed annually. Is the youth entitled to an annual review of his placement?

Such issues are known generally as conflict of laws. The conflict-of-laws issue arises when a court is faced with the laws of two or more states which are different and seemingly have pertinence to a case before the court. The court uses procedural conflict rules to choose which law to apply.

Some characteristics of interstate placements complicate the application of conflict-of-laws rules to situations involving interstate placements. In the first place, much of the potentially applicable laws are directed at regulating agencies or officials involved in the placements rather than the children. In addition, the placements are made after the fact. That is to say, the legal hearing establishing the child's status occurs before the decision is made to subject the child to another state's laws.

State laws that regulate interstate placements usually impose obligations on officials, agencies, institutions, and facilities. Licensing laws are a good example. However, children who are the intended beneficiaries of these statutes can sometimes seek enforcement of the duties imposed on facilities. It is only through such attempts that standards and the rights of youth might become conflict-of-laws issues. Factually, conflict issues will arise when either the receiving or the sending state provides higher standards, and a child or guardian seeks the preferable benefits.

The second complicating factor mentioned above results from the legal process from which the placements occur. Typically, official placements occur in two steps: first there is a declaration of a "status" and then a selection of a "remedy." The declaration of a status can be a judicial finding that a child is delinquent, neglected, or dependent; it can result from an administrative determination that a child is handicapped or in need of special education, or it can result from a finding that a child is mentally retarded or mentally ill. All of these are official determinations that a particular status is applicable to a child.

The selection of a remedy is simply the placement decision; a judicial or executive officer determines where to send a child.

For interstate placements, this two-step process complicates the conflict-of-laws analysis because entitlements might derive either from the declaration of a particular status or from the selection of a particular remedy. A child might be entitled to certain treatment because he has been declared mentally retarded, or a child might be entitled to particular care simply because he is in a particular facility.

Even with these complicating factors, the two legal principles traditionally applied are those of "domicile" and of "significant relationship."

Domicile

One basis used to resolve conflict-of-laws issues is the legal concept of domicile. For most children, domicile is determined by looking to where their parents live. Once a child's domicile is established, the law of that jurisdiction is applied to determine such statuses as legitimacy or adoption, and the relationship between parents or guardians and their children.[138]

The universal conflict rule is that although the law of domicile determines status, the incidents of the status are determined by the law where an issue arises. Thus, for a parent and child who are domiciled in New York, but involved in a dispute over their mutual duties in Vermont, a court following this traditional conflict rule would use New York law to determine the existence of the reciprocal statuses of parent and child, but would use Vermont law to determine what obligations the New York parents and child owed each other in Vermont.

If this traditional rule were applied to interstate placement situations, it would result in the application of the law of the sending state to determine status but the law of the receiving state to determine a child's rights and entitlements while in placement. However, not all statuses are determined by the law of domicile. In conflict situations, the more onerous statuses, such as insanity or mental incompetency, are not based on law of domicile. In these situations, both the status and the incidents of the status are determined by the law of the state where the issue arises.[139] A person declared legally insane in one state would require a separate determination in the second state to be considered insane under its laws. Some states, however, have statutes which alter, in a practical manner, this legal rule.[140] This conflict rule stands, in effect, as a rejection of status determinations based on the law of the domicile. If this rule were applied to interstate placements, the law of the sending state would obviously not affect either the status or the incidents of the status, and the law of the receiving state law would control in all aspects of the legal determination.

While rules regarding the declaration of insanity is fairly clear, there is no conflict-of-laws rule regarding the statuses most common to interstate placements of children. Would delinquency, neglect, mentally retarded, or mentally ill statuses declared in one state be accepted in another state as giving rise to entitlements derived from the status?

Significant Relationship Rule

The use of domicile to resolve conflict situations operates too mechanically at times, and some courts have begun to replace it with a rule based on "significant relationships."[141] When courts are presented with conflict problems, they will examine the facts to determine which state has the most significant relationship to the case: its law will then be applied.

In most interstate placement situations, the significant relationship rule would probably result in the application of the law of the sending state. The child's family and friends, the sending court or agency, and other significant events and relationships are all found in the sending state. Commonly, interstate placements (and particularly involuntary placements to secure residential facilities) are not for the purpose of integrating a child into a new community. Implicit in interstate placements is the expectation that a child will ultimately return to the community that sent him. The interstate placement is temporary, and is intended to obtain services, education, training, or discipline that is not available in the child's home community.

The significant relationship rule results in an opposite conclusion than the simple domicile rule. The law of the sending state, rather than the receiving state, would normally be applied. It is somewhat ironic that the characteristics of domicile--family, permanency--are the basis for application of the law of a sending state, in a situation occasioned by an out-of-state placement.

This significant relationship rule strikes a balance with some older legal rules related to a child's domicile. Laws usually make it difficult to change a child's domicile because contact with parents has been historically accorded great importance. The use of this newer significant relationship rule would reinvigorate this traditional importance given to a child's home state.

A Third Rule: Application of the Law with Greatest Benefits for the Child

In application, both the "domicile" and "significant relationship" rules are arbitrary: both look at extrinsic facts to determine whether the law of one state or another state is applicable to a specific case. The substantive outcomes are ostensibly irrelevant to the process of deciding which law to apply.

One less arbitrary approach would require that a court apply the state law that gives a child the greater protection or the higher standards. Such a conflict rule does have some basis in American law.

An analogous situation can be found in the early history of American workers' compensation legislation. Even in the early days of workers' compensation law, it was common for workers to live in one state, be employed by a business of another state, at a work site in yet a third state. Each state had separate compensation and torts law systems, with varying benefits and rights. When an industrial injury occurred in such a situation, courts had to decide which of three state compensation laws was applicable: the state of the worker's domicile, the business' domicile, or the state where injury occurred. Some courts applied the law of the state where injury occurred; others held that the state where the employment contract controlled the outcome.

Application of these conflict rules was erratic. Ultimately, many state legislatures intervened and established the rule that the state compensation system with the highest benefits applied to an injured worker.[142]

There is nothing peculiar to the interstate placement of children that would prevent a similar resolution. If such a rule developed, eithe through legislation or case law, children involved in interstate placement would receive the benefits of whichever state law provided the highest standards, protections, or entitlements.

In a recent and extremely interesting case, the Minnesota Supreme Court may have established a remarkable rationale for resolving conflict questions which arise in conjunction with interstate foster care placements.[143]

The case began in California where a man was convicted in 1975 of killing his wife. He was imprisoned and his five-year-old son, Carl, was declared "dependent." After legal custody had been transferred to the San Diego County welfare department, the court placed the boy to live with an aunt and uncle, named Krolick, in Minneapolis. The California court maintained continuing jurisdiction and specified that annual dependency reviews be conducted by the San Diego County welfare agency. After the father was paroled in 1978, he petitioned for the return of his son. The court ordered Carl to be returned to California, which prompted the aunt and uncle to file suit in Hennepin County District Court, asking that Carl be declared "neglected or dependent" under Minnesota statutes, and to enjoin his removal to California. When the temporary injunction was dissolved, because the Minnesota district court determined that California law took precedence, the Krolicks appealed. They sought to establish Minnesota as Carl's "home state" because of his "significant connections" there after a period of three years. The court's decision is remarkable for its inconsistencies and can only be rationalized from a "best interests of the child" perspective. It reinstated the temporary injunction, after finding that foster parents in Minnesota, have no standing to contest the removal of a foster child; it held that California's jurisdiction took precedence over that of Minnesota but refused to apply California's law which gives standing to foster parents to sue in these types of cases; it questioned the relevance of the

Uniform Child Custody Jurisdiction Act (UCCJA) after acknowledging its applicability, and then remanded the case for an evidentiary hearing which the UCCJA does not require.

After noting that dependency cases are embraced under UCCJA, the court draws a critical distinction between such proceedings and divorce cases where child custody is involved: dependency cases, unlike divorce custody cases, contemplate the active and continuing supervision of the issuing court. So, while the UCCJA properly permits the child's "home state" to be shifted when the parties to the decree move out of state, it is much less appropriate to a dependency situation. However, another UCCJA provision was considered central to the decision, even though it was intentionally misapplied. Section 19 provides that California could request an evidentiary hearing in Minnesota germane to the question of ultimate jurisdiction. The Minnesota Supreme Court, therefore, remanded the case back to district court, ordered that an evidentiary hearing be held, directed that the San Diego Superior Court be so advised, and reinstated the temporary injunction forbidding Carl's removal from Minnesota pending an outcome of the hearing. The court reasoned:

> While we acknowledge that Minnesota is without primary jurisdiction to entertain appellants' petition for a finding of dependency or neglect under the UCCJA, we also recognize, as did the Colorado Supreme Court in Fry v. Ball, that the UCCJA calls for "cooperation between courts of different states which will lead to an informed decision on custody." 544 P.2d at 407. Because we presume that the San Diego Superior Court would not knowingly render a final decision in the absence of a complete record, under the ancillary jurisdiction afforded by the presence of the child and the foster parents in this state, we condition his return on the opportunity for a hearing in Minnesota.[144]

Applying Standards of the Sending or Receiving State To An Interstate Placement

Three early cases are suggestive of whether the standards of the sending or receiving state are applicable to an interstate placement. All three cases appear to have been decided when the states involved had only rudimentary standards for child care. As such, the legal issues in the cases reduced themselves to whether courts in the receiving state should apply their own laws or those of the sending state to the situations. If modern child-care standards can be considered analogous to earlier statutory grants of authority to private institutions to determine the "suitability" of placements, or to courts to determine the "best interests" of children when selecting placements, then these three early cases are authority for whether the standards of a sending or receiving state are applicable to current interstate placements.

Perhaps not surprisingly, the three cases are divided: one of the cases applies the law of the sending state; the second and third cases apply the laws of the receiving states.

The Law of the Sending State Is Applicable

In Milligan v. State, ex rel. Children's Home of Cincinnati, Ohio, the Indiana Supreme Court applied Ohio law to determine that a child placed in foster care in Indiana must be returned to the Ohio institution.[145] The Ohio private institution had placed the child with Indiana foster parents under an agreement which provided for return of the child if the institution determined that the foster home was unfit. In addition to the agreement, both the institution's charter and an Ohio statute provided for such determinations of fitness by the institution.

Sometime after the Indiana placement had been made, the Ohio institution determined that the foster home was unfit and requested return of the child. The request was refused by the foster parents and the institution brought habeas corpus proceedings in an Indana court to effect the return of the child.

In granting the writ of habeas corpus and ordering the return of the child to Ohio, the Indiana Supreme Court held that Ohio law was determinative of the rights of the parties to custody of the child. Thus, the Indiana Supreme Court gave effect to the manner in which Ohio law set standards for child placements, i.e., by delegating standard-setting authority to private institutions.

The Law of the Receiving State Is Applicable

The case of New York Foundling Hospital v. Gatti is distinctive because it is an interstate placement that was considered by the U.S. Supreme Court.[146] It also is an example of a court applying the law of the receiving state to determine the propriety of an interstate placement. The case arose in 1904 when a priest in the Territory of Arizona wrote to the New York Foundling Hospital and requested that a number of children be sent to Arizona to be placed with his parishioners, who were represented "to be of the Spanish race, but to be persons who spoke the English language." Responding to the priest's request, the hospital dispatched 40 children under the guidance of three nuns and an agent to Arizona.

While the children were enroute from New York to Arizona, letters had been sent by the hospital to the people who were to receive the children. The letters requested that the foster parents inform the hospital of their names, addresses, business occupations, and the names of the children they received. The foster parents were requested to inform the hospital annually "about the first of May, how the child was progressing and giving other items of interest."

According to the court's opinion, notoriety about the children and their impending placement with Mexican families had spread through the Arizona community.

When the train carrying the children arrived, the priest, a "crowd of Mexicans," and "a few American women of good families" were waiting at the station. Observing the crowd gathered at the station, one of the nuns asked the priest whether any of the children were to be placed with "half-breeds." The priest answered the nun that the children were to be placed with people who were "all good American citizens, moral and had no children of their own, and that the homes were all that could be wished for." The priest further assured the nun that no "half-breeds" would receive the children and that all of the families lived in frame houses.

The nun, apparently not wholely satisfied with the priest's assurances, said that all the placements were on a trial basis "until such time as the homes could be visited by the sisters and that, if it were found that any of the homes were not as expected, the children would be removed."

The children were placed with the families selected by the priest. These families were later described by the Arizona Court as "wholly unfit . . . of the lowest class of half-breed Mexican Indians; that they were impecunious, illiterate, unacquainted with the English language, vicious, and in several instances, prostitutes and persons of notoriously bad character; that their homes were of the crudest sort, being for the most part built of adobe, with dirt floors and roofs; that many of them had children of their own, whom they were unable to properly support." After a brief period in these placements, the children were described to have become "in a filthy condition, covered with vermin and, with two or three exceptions, ill and nauseated from the effects of coarse Mexican beans, chilies, watermelons, and other improper food which had been fed them, and in some instances from the effect of beer and whiskey that had been given them to drink."

The American residents of the area were outraged at the placements. A committee was formed by a deputy sheriff and others. Public meetings were held to express their outrage. Some of the children were removed from their placements. The hospital's agent and the nuns were urged to remove the remaining children. Some of the children were kept by the families who had removed them, while the others were taken back to New York by the hospital's agent and the nuns. Those families who retained children applied to an Arizona court for letters of guardianship.

Shortly thereafter, the hospital sought writs of habeas corpus from an Arizona court seeking the return of the few children who remained with the American families in Arizona.

The hospital argued that New York law gave it a right to custody of the children. The Arizona families argued that their letters of guardianship gave them a right to custody, and that certain technical defects prevented the hospital from having any rights to custody in Arizona. The Arizona Supreme Court rejected the arguments of both the hospital and the Arizona families which were based on bare legal rights. Instead of considering technical legal arguments concerning rights to custody, the court made a determination of what placements were in the best interests of the children. In effect, it applied the law of the receiving state to determine the propriety of the placements. The Arizona court wrote:

> We hold, therefore that, under the facts as we find them, neither the (Hospital) nor the (Americans) have any such legal claim as authorizes us for that reason to award to either of the parties the care and custody of these children. We have, then, to decide what disposition must be made of the children, to subserve best their welfare. The (Hospital) has frankly conceded that a great blunder was committed in the consignment and delivery of the children to these degraded half-breed Indians. The evidence satisfied us that it was an unintentional blunder on the part of the institution, and was caused by the misleading and inaccurate report of the local priest, who was not connected with the institution, and was a foreigner and unacquainted with existing conditions; that such blunder was not remedied at the time because of the tactless stubborness of the agent, and the feeling of the sister in charge that she must bow to the authority of the priest, who insisted upon such disposition. We recognize the desire of the institution to right now, and to right itself, the wrong done these children, and to secure for them now suitable homes to be chosen by it, and, with the record of its great service to humanity in the past, we have no doubt of its purpose and ability to do so; but as, in the full light of the history of this transaction, shown by the evidence adduced at the trial, of which the institution so far away can hitherto have had but partial knowledge, it appears that the mistake, as originally made, was made by one not connected with the (Hospital) and that the ultimate purpose of the institution--that of finding suitable homes for their children--has in this instance already been accomplished, we do not believe that the best interest of these children will be promoted by allowing the petitioner to adopt the course which it desires.[147]

The court determined that the children's best interests required that they remain with the American guardians in Arizona. The hospital appealed to the U.S. Supreme Court. The appeal to the U.S. Supreme Court was, however, dismissed for lack of jurisdiction. The court construed the statute in effect at that time to exclude habeas corpus cases involving children's issues from its jurisdiction. The Supreme Court wrote:

> It was in the exercise of this jurisdiction as parens patriae that the present case was heard and determined. It is the settled doctrine that in such cases the court exercises a discretion in the interest of the child to determine what care and custody are best for it in view of its age and requirements. Such cases are not decided on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of an adult, but upon the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. In such cases the question of personal freedom is not involved except in the sense of a determination as to which custodian shall have charge of one not entitled to be freed from restraint....

> We think that such considerations as these induced Congress to limit the right of appeal to this court in habeas corpus cases. The discretionary power excercised in rendering the judgment, the ability of local tribunals to see and hear the witnesses and the rival claimants for custody of children, induced, in our opinion, the denial of appeal in such cases as the one at bar, as distinguished from those of a different character, where personal liberty is really involved.[148]

Although the later holding in Gault renders this language obsolete with respect to juvenile justice, the Court still refuses to review child custody disputes based on similar reasoning. At least in the case of disputes concerning private placements in private institutions, Gatti is likely to represent how the U.S. Supreme Court would continue to rule, if it were presented with the issue today.

Child Saving Institute v. Knobel is a 1931 case where the Missouri Supreme Court applied its own law to determine the propriety of a placement from Nebraska.[149]

The case arose when a brother and sister, Alice and Albert Pollard, were delivered to the Child Saving Institute, in Nebraska, by their father after their mother died. In a written instrument, the father relinquished all rights and claims to his children and authorized the institution to consent to their adoption. Although not part of the written instrument, the father expressed his desire that the children be kept together and be raised as brother and sister.

A Missouri couple visited the Nebraska institution in their search for a young girl to adopt. They were attracted to Alice Pollard and expressed an interest in adopting her. The institution indicated that they would make a placement only if Albert and Alice were taken together as brother and sister. Reluctantly, the Missouri couple accepted this condition and entered into an agreement with the institution for a trial placement of Albert and Alice. They agreed to return the children if requested by the institution.

About two months after they returned to Missouri with the children, the couple decided that they did not like Albert and sent him back to the Nebraska institution and then adopted Alice in a Missouri court. The Nebraska institution brought proceedings in a Missouri court for a writ of habeas corpus to compel the return of Alice.

The Missouri Supreme Court granted the writ and ordered the return of Alice to the Nebraska institution. While the major portion of the decision concerns the invalidity of Alice's adoption, the Missouri Supreme Court appears to have also considered Missouri law to determine the "best interests" of Alice in her Missouri placement. The court wrote:

> Respondents make the further contention that although the decree of adoption be void, the best interest of the child, which is the guiding star in proceedings of this character, authorized the decree of adoption. We do not agree to this contention. In the first place, the parties having the right to the legal custody of the child were

> entitled to notice and an opportunity to be heard on the question as to whether or not it would be for the best interest of the child that it be adopted by respondents. No notice of any kind was given, and the decree of adoption was rendered without the knowledge or consent, of the parties who had the legal right to the custody of the child. In the next place, there was no substantial evidence that it would be for the best interest of the child to permit respondents to adopt it. True, the evidence shows that respondents' financial ability to support the child and their moral fitness to be entrusted with its care and custody was unquestioned. But there was no substantial evidence that the Child Saving Institute was not supporting and maintaining the child and furnishing it proper moral and intellectual training. Respondents tell this court in their brief: "That this institution is a large institution. They have some thirty workers to care for the children. They have the advantages of the public schools; are careful in employing proper people to care for the children, and they have Sunday School in the institution. * * * There will be nothing said in their brief seeking to cast a reflection upon that institution. It is noble in purpose, and in all probability, has been the source of finding many homes for children, and has aided them in becoming good citizens."
>
> Mr. McGraw, superintendent of the institution, testified that the institution had a suitable home where the little girl and her brother could be placed and reared together.
>
> The mere fact that respondents were financially able and morally fit to furnish the child a good home would not entitle them to take the child from the legal custodian without any showing that such custodian was not properly caring for the child. The evidence does not support the contention that it would be for the best interest of the little girl to separate her from her little brother and permit respondents to adopt her.
>
> For the reasons stated, Alice Louise Pollard should be released from the custody of the respondents and delivered into the custody of petitioner. It is so ordered.[150]

FEDERAL ISSUES RELATED TO THE INTERSTATE PLACEMENT OF CHILDREN

Thus far, of the three branches of the federal government, only the federal judiciary has attempted to apply legal rules to control interstate placements of children. With the U.S. Constitution and social security legislation as the bases, a federal court in Louisiana intervened, in the Gary W. case, to control the interstate placement practices of the State of Louisiana.[151]

If the other branches of the federal government are to become involved in the interstate placement of children, beyond committee testimony and research, specific grants of authority in the U.S. Constitution must lay a basis for such involvement. The following comments examine the possibility that either the census clause or commerce clause could provide a basis for Congress to enact legislation regarding the interstate placement of children.

Census Power: Enumeration and Investigation

The U.S. Constitution provides for an enumeration of persons for purposes of apportioning congressional representation and direct taxes among the states. The U.S. Constitution provides:

> The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.[152]

While the census power appears limited in its scope, Congress has authorized broad and diverse inquiries under it. One legal source explains the broad use Congress has put to this clause.

> Congress, in the exercise of sound discretion, must determine in what manner it will excercise a power which it possesses. . . .The Constitution orders an enumeration of free persons in the different states every ten years. The direction extends no further. Yet Congress has repeatedly directed an enumeration not only of free persons in the states but of free persons in the territories, and not only an enumeration of person but the collection of statistics respecting age, sex, and protection.[153]

Such broadening of census inquiries has withstood a variety of constitutional challenges. It does not unduly expand the powers granted to Congress, since such inquiries "are necessary and proper for the intelligent exercise of other congressional powers enumerated in the constitution; nor do these inquiries violate fourth amendment strictures against unreasonable searches and seizures."[154] "The authority to gather reliable statistical data reasonably related to governmental purposes and functions is a necessity if modern government is to legislate intelligently and effectively, and the questions in the questionnaire related to important federal concerns, such as housing, labor and health, were not unduly broad and sweeping in their scope." Nor, do such questions involve an unconstitutional invasion of privacy.[155]

The decennial census is authorized to be conducted in such form and content as the Secretary of Commerce may determine. Special surveys are authorized, and in connection with any decennial census, the Secretary of Commerce is authorized to obtain such other census information as necessary. A "mid-decade census of population" is also authorized in such form and content as the secretary may determine.[156]

Perhaps most pertinent to the question of interstate placements is a provision, respecting miscellaneous surveys authorized for the Department of Commerce along with the decennial census, found in the code.

> (a) The Secretary may collect decennially statistics relating--
>   (1) to the defective, dependent, and delinquent classes; and
>   (2) to crime, including judicial statistics pertaining thereto.
>
> (b) The statistics authorized by subsection (a) of this section shall include information upon the following questions, namely: age, sex, color, nativity, parentage, literacy by race, color, nativity, and parentage, and such other questions relating to such subjects as the Secretary deems proper.
>
> (c) In addition to the decennial collections authorized by subsections (a) and (b) of this section, the Secretary may compile and publish annually statistics relating to crime and to defective, dependent, and delinquent classes.[157]

The statistical categories authorized by Section 101 appear to be broad enough to cover many of the children typically involved in interstate placements. "Defective, dependent and delinquent" seem likely to cover most placements made or arranged by public agencies.

Other miscellaneous provisions which might be applicable to statistical collections involving interstate placements are found in the penalty provisions of Title 13. In Sections 223 and 224, the duty to report requested information is placed upon any "institution, establishment, religious body or organization of any nature whatsoever" and to give ingress to census takers to any "boarding or lodging house, tenement, or other building."[158]

If policy requires no more than national statistical information about interstate placement activities, both the census power and current statutes enacted under it appear to give a basis for this federal action. At the same time, it must be remembered that both the census clause and the statutes enacted under it appear to establish an essentially passive power. It permits the federal government to count but it does not authorize any regulation of activities. If policy requires federal regulation of interstate placements, Congress must base its legislation on some other power than the census power.

Commerce Clause

The commerce clause is frequently used by Congress as a basis for regulatory activities. The difficulty in understanding whether the commerce clause can be a basis for federal regulation of interstate placement is that there is no precedent for its use in the field of child care. Traditionally, the commerce clause has been used as a basis for regulation of economic activities, the tangible articles of commerce, and the simple transportation of people, although in such laws as the Mann Act, the commerce clause has been used to regulate movements of a specified group of people.[159]

The closest that Congress has come to regulating an activity under the commerce clause with a gross similarity to interstate placements may be the 1964 Civil Rights Act. Title II, Sections 201 through 207, generally prohibit racial discrimination in public accommodations, which are defined broadly to include hotels, restaurants, and sports and entertainment facilities.[160] The premise is that these public facilities sell products which moved in interstate commerce or that they provide services to interstate travelers. As such, they are subject to the act.

In Heart of Atlanta Motel, Inc., vs. U.S., the Supreme Court held that the commerce clause alone was a sufficient constitutional basis for enactment of the act. It was not necessary to consider the 14th amendment in order to extend the Civil Rights Act to the states. In discussing the power of Congress over interstate travel, the Court wrote:

> The determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is "commerce which concerns more than one state" and has a real and substantial relation to the national interest. . . .
> That the "intercourse" of which the Chief Justice (Marshall) spoke included the movement of persons through more States than one was settled as early as 1849. . . . Nor does it make any difference whether the transportation is commercial in character. . . .
> The same interest in protecting interstate commerce which led Congress to deal with segregation in interstate carriers and the white slave traffic has prompted it to extend the exercise of its power to gambling, to deceptive practices in the sale of products, to fraudulent security transactions, to misbranding of drugs. . . . to discrimination against shippers, to the protection of small business from injurious price cutting,. . . . and to racial discrimination by owners and managers of terminal restaurants (Boynton v. Virginia, 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206).[161]

The issue is whether the placement of children in another state to receive special education, therapeutic services, or corrections supervision falls within the constitution's meaning of commerce. If the Heart of Atlanta Motel case provides an appropriate analogy to interstate placements, then a critical question for federal intervention is whether the interstate placement of children is "commerce" which concerns more than one state and has a real and substantial relation to the national interest. If either the sending or receiving practices involved in interstate placements can be construed to be "interstate commerce," then the commerce clause could provide a basis for federal intervention. Militating against congressional use of the commerce clause is the lack of historical precedent, the traditional control of child care by the states, and the uncertain reach of meaning of "commerce."

CONCLUSION

Four issues appear to be central to the law of interstate placement of children:

- Are interstate placements constitutional?
- Are the placements legal?
- What legal mechanisms are used to effect the placements?
- Do the laws of the sending state or the receiving state regulate the incidents of an interstate placement?

Two recent cases have provided some direction as to the constitutionality of interstate placements. In the Gary W. and Sinhogar cases, the courts clearly held that a state boundary is no barrier for determining the constitutionality of an interstate placement. Although a state boundary does not establish a constitutional barrier to sending a child into another state, these cases do affirm that the procedures used to make such placements must satisfy due process. Nonetheless, neither case established any special due process requirements for interstate placements.

The second issue concerning interstate placements involves their legality. Because interstate placements are made by judicial and executive officials, the laws applicable to this issue are largely statutory and are a body of law distinct from both state and the federal constitutions. Statutes authorizing the placement of children by officials can be divided into three categories: those that specifically authorize interstate placements, those that specifically prohibit them, and those that are ambiguous but appear to be applicable. This statutory pattern is found in placement enablements for juvenile courts and for agencies in the fields of juvenile corrections, services to children, mental health, and education. Only in those states where such laws are specific either in authorizing or prohibiting placements can the legality of interstate placements be readily determined.

Differences exist in these authorities concerning the legal mechanisms used to make interstate placements. With the exception of education statutes, most of the statutes require the legal mechanism to be a court order. Education officials, however, are typically authorized to make such placements by contract. This distinction is significant for purposes of determining the out-of-state enforceability of placements. Contracts have a well-defined body of law which supports their out-of-state enforceability, while "orders" lack such definite legal rules.

Another distinction in pertinent statutory authority is whether they concern the sending or receiving of children into a state. Most of the modern statutes treat interstate placement in terms of sending children out of state. Older statutes, such as import-export statutes, and special education statutes are principally concerned with the receiving of children from other states. The one modern exception is the increasing use of facility licensing to force reporting of residents from other states.

The import and export statutes fill a gap in the discussion of interstate placement issues. They express legislative awareness of the problems involved in sending children across state lines. Intended to be applied in much the same manner as rules of comity for court and administrative placements, these laws establish methods for "regularizing" child placements and assuring the same state involvement in interstate placements as are applied to intrastate ones.

Based on the absence of court interpretations of these statutes, it is fair to assume that the import and export statutes are not extensively utilized. At the same time, they appear to be alternatives to the Interstate Compact on the Placement of Children and the Interstate Compact on Juveniles for regulating interstate placements of children. Because of the absence of court decisions construing the application of all of these laws, it is not possible to conclude whether there is any congruence in their coverage.

What is most obvious in examining statutory authorities regarding interstate placements is that no coherent legal theory or approach has directed the development of the law. Within a single state, several different functional agencies will have dissimilar authority regarding interstate placements and will use diverse legal mechanisms for arranging the placements. Even when the interstate authority of similar functional agencies is compared among the states, a lack of coherence or similarity persistently emerges. The one exception to this general pattern are educational agencies. For whatever reasons, the legal authority of school systems to effect interstate placements is most frequently addressed specifically. When authorized, the simple legal mechanism of contract is invariably authorized for use to make the placements.

The fourth principal issue in the law of interstate placements involves whether the law of the sending or receiving state controls the incidents of an interstate placement. If an interstate placement otherwise meets constitutional requirements and is authorized by the law of the sending state, this issue arises when the qualitative legal standards of care for a child in placement are different in the reciprocal states. There are existing conflict-of-laws rules that can be used to determine which law is applicable; however, none of these conflict rules were fashioned for the unique problem of the child in interstate placement. The few cases involving interstate placements which apply conflict rules are simply inconsistent and no clear rule appears to be used to decide the issue. Ultimately, only the U.S. Supreme Court can establish a standard to provide clearer light on the issue.

As a final note, there appears to be a constitutional basis for congressional intervention into this field, in addition to judicial cognizance. It could be predicated upon the census clause, if statistical data are desired, or upon the commerce clause, if regulation is the objective. There are legal obstacles, to be sure, principally resulting from a lack of precedent for federal regulation of services to children.

FOOTNOTES

1. Portions of this chapter originally appeared in the Council of State Governments' The Interstate Placement of Children: A Preliminary Report, (Lexington, Ky.: 1978).

2. Gary W. et al. v. State of Louisiana, 437 F. Supp. 1209 (D.C. La., 1976).

3. Ibid., p. 1213.

4. Ibid., p. 1215.

5. O'Connor v. Donaldson, 422 U.S. 563, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975); Rouse v. Cameron, 373 F.2d 451 (D.C. App., 1966, as amended 1967); Wyatt v. Stickney, 325 F. Supp. 781 (D.C. Ala., 1971); Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir., 1974); Martarella v. Kelley, 349 F. Supp. 575 (S.D. N.Y., 1972).

6. See, Randolph P. Reaves, "The Right to Treatment for Juvenile Offenders," Cumberland Law Review, vol. 7, no. 1 (Spring 1976) pp. 13-28; Jill K. McNulty and William S. White, "The Juvenile's Right to Treatment," Santa Clara Law Review, vol. 16, vo. 4 (Fall 1976), pp. 745-82; Harry Swanger, "Juvenile Institutional Litigation," Clearinghouse Review, vol. 11, no. 3 (July 1977), pp. 219-21.

7. In re Dennis M., 370 N.Y.S. 2d 458 (1975); State in the Interest of F.D., 351 A.2d 43, 138 N.J. Super. 383 (1975); State ex rel. Juvenile Department of Multnomah County v. L., 546 P.2d 153 (Ct. of App. Ore., 1976).

8. Gary W., op. cit., p. 1217.

9. Ibid., p. 1219.

10. In re Gault, 387 U.S. 1, 18 L. Ed. 2d 527, 87 S. Ct. 1428 (1967).

11. Morales v. Turman, 383 F. Supp. 53 (D.C. Tex., 1974), pp. 115-18, reversed 535 F.2d 864 (5th Cir., 1976); per curium opinion reversing 5th Cir., 20 Cr.L. 4196.

12. Sinnett v. Mountain Mission School, 1 F.L.R. 2710, filed U.S.D.C., Western District, Va., Docket No. 75-0306 (1975); Park v. Thompson, 13 C.L.R. 2132 (D.C., Hawaii, 1973), 356 F.Supp. 789, citing with approval J. Soloman in Capitan v. Cupp, Civil No.73-738 (D.C. Ore., Dec. 1972); and Rebideau v. Stoneman, 17 Cr.L. 2463 (D.C. Vt., 1975), 398 F.Supp. 805, pp. 809 and 814. See also David P. Dwork, (Note) "The Child's Right to Sue for Loss of a Parent's Love, Care and Companionship Caused by Tortious Injury to the Parent", Boston University Law Review, vol. 56, no. 4 (July 1976), pp. 721-744.

13. R. S. Levine, "Caveat Parens: A Demystification of the Child Protection System," University of Pittsburgh Law Review, vol. 35, no. 1 (Fall 1973), p. 1.

14. L. S. Tabakin, "Increasing the Rights of Foster Parents," *University of Pittsburgh Law Review*, vol. 36, no. 1 (Spring 1975), p. 715; J. Evans, "C.V.C. v. Superior Court: Court Versus Adoption Agency Control of Agency Adoptions before a Petition for Adoption is Filed," *Hastings Law Journal*, vol. 26 (Sept. 1974), p. 312; Elizabeth B. Joyce, "Foster Parent Standing in Custody--Modification Proceedings: Eason v. Welfare Commissioners", *Connecticut Law Review*, vol. 9, no. 3 (Spring 1977), pp. 496-510; but see *Smith* v. *Org. of Foster Families*, 431 U.S. 816, 53 L. Ed. 2d 14, 97 S. Ct. 2094 (1977); and Fay Cliett Gillham, "Long-Term Foster Parents and Children Have No Protectable Interest in Their Relationship", *Mercer Law Review*, vol. 29, no. 4 (Summer 1978), pp. 1134-54.

15. *Sinhogar et al.* v. *Parry et al.*, 412 N.Y.S.2d 966 (1979). Appeal modified and remanded 427 N.Y.S.2d 216 (1980).

16. Ibid., 412 N.Y.S.2d, at p. 972.

17. Ibid.

18. *Sinhogar* v. *Parry*, 427 N.Y.S.2d, 216 (Appellate Division, First Department, February 1980).

19. Ibid., pp. 221 and 222.

20. Ibid., pp. 223 and 224.

21. Ibid., p. 222.

22. *Parham* v. *J.R.*, 442 U.S. 584, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979); *Secretary of Public Welfare of Pennsylvania* v. *Institutionalized Juveniles*, 442 U.S. 640, 61 L. Ed. 2d 142, 99 S. Ct. 2523 (1979).

23. Beyond the statutes considered in this section, several states have constitutional provisions that may have some effect on out-of-state placements. These state constitutional provisions usually limit "exiling" or "transportation out of state" as punishments for crimes. Whether these provisions have any application to judicial or executive agency interstate placements of juveniles has not been the subject of reported judicial decisions.

24. *In re Church*, 204 S.W.2d 126 (Ct. App. Mo., 1947).

25. Michigan Attorney General's Opinion, No. 0-4543, April 8, 1946.

26. *Comm. ex rel. Lembeck* v. *Lembeck*, 83 Pa. Super. 305 (1924).

27. *State in the Interest of D.F.*, 351 A.2d 43, 138 N.J. Super. 383 (1975); *In re Dennis M.*, 370 N.Y.S.2d 458 (1975); *State ex rel. Juvenile Department of Multnomah County* v. *L.*, 546 P.2d 153 (Ct. of App. Ore., 1976).

28. *Reyna* v. *Department of Institutions, Social and Rehabilitation Services*, 546 P.2d 622 (Sup. Ct. Okla., 1976).

29. Ga. Code Ann., Uniform Juvenile Courts Act.

30. In re A.S., 232 S.E.2d 145 (Ct. Apps. Ga., 1977).

31. Ind. Code, Sec. 31-5-2-1 and Sec. 31-5-7-15.

32. Ind. Code, Sec. 29-1-18-8. This statute is ambiguous in whether it applies to all guardians appointed by Indiana courts or merely to "probate" guardians.

33. Idaho Code, Sec. 16-1814(3); Utah Code Ann., Sec. 78-3a-42; Wyo. Stat., Ann, Sec. 14-115.30(a)(vi).

34. Ga. Code Ann., Title 24A, Chs. (Secs. 24A-101 thru 24A-4001) 1-40; La. Rev. Stat.Ann., Sec. 13:1561.1 and ff.; N.D. Cent. Code, Secs. 27-20-01 thru 27-20-59; Tenn. Code Ann., Secs. 27-201 thru 27-281.

35. La. Rev. Stat. Ann., Sec. 13:1571.7.

36. Ore. Rev. Stat., Sec. 419.507.

37. Idaho Code, Sec. 16-1814(3); Okla. Stat., Title 10, Sec. 1116(a)(2); Nev. Rev. Stat., Sec. 62.200(1)(b).

38. Mo. Rev. Stat., Sec. 211.181(2)(c).

39. N.C. Gen. Stat., Sec. 7A-286(2)(c).

40. Neb. Rev. Stat., Sec. 83-108.04.

41. Neb. Rev. Stat., Sec. 83-175.

42. La. Rev. Stat. Ann., Sec. 15:1092.

43. Vt. Stat. Ann., Title 33, Sec. 638.

44. Alaska Stat., Sec. 47.10.230.

45. Conn. Gen. Stat. Ann., Sec. 17-420.

46. Conn. Gen. Stat. Ann., Sec. 17-32(g).

47. Mich. Stat. Ann., Sec. 25.399(54).

48. Mo. Rev. Stat., Sec. 219.086.

49. Del. Code Ann., Title 31, Sec. 352.

50. Some of these statutes also cover mentally retarded children or other categories of handicapped children. See e.g., Ala. Code Sec. 21-1-14. Such statutes reflect a melding of the older tradition of education for the deaf and blind laws and more modern education for the handicapped laws.

51. Ala. Code, Secs. 21-1-1 thru 21-1-23, nonresident children who are deaf, blind, or with special needs are eligible for admission at Sec. 21-1-14.

Ariz. Rev. Stat. Ann., Secs. 15-801 thru 15-851, nonresident children who are deaf or blind are eligible for admission at Sec. 15-834.

Ark. Stat. Ann. Secs. 80-2401 thru 80-2430, nonresident children are eligible for admission at Sec. 80-2407.

Calif. Welf. & Instns. Code, Secs. 59100 thru 59144, nonresident blind children are eligible for admission at Sec. 59131; Secs. 59000 thru 59045, nonresident deaf children are eligible for admission at Sec. 59031.

Colo. Rev. Stat. Ann., Secs. 27-35-101 thru 27-35-116, nonresident deaf or blind children are eligible for admission at Sec. 27-35-110.

Conn. Gen. Stat. Ann., Secs. 10-312 thru 10-316(a), nonresident deaf children are eligible for admission at Sec. 10-316.

Ga. Code Ann., Secs. 35-701 thru 35-709, nonresident blind children are eligible for admission at Sec. 35-706; but Secs. 35-801 thru 35-810 pertaining to deaf children are ambiguous as to whether nonresident deaf children are eligible for admission at Sec. 35-805.

Iowa Code Ann., Secs. 269.1 thru 269.2, nonresident blind children are eligible for admission at Sec. 269.1; Secs. 270.1 thru 270.8, nonresident deaf children are eligible for admission at Sec. 270.3.

Kans. Stat. Ann., Secs. 76-1001 thru 76-1006, nonresident deaf children are eligible for admission at Sec. 76-1006; Secs. 76-1101 thru 76-1116, nonresident blind children are eligible for admission at Sec. 76-1102.

Ky. Rev. Stat. Ann., Secs. 167.015 thru 167.990 pertains to both deaf or blind children but is clear only as to eligibility of nonresident blind children for admission at Sec. 167.150.

Mich. Stat. Ann., Secs. 15.1451 thru 15.1472, nonresident blind children are eligible for admission at Sec. 15.1466; Secs. 15.1401 thru 15.1420, non-resident deaf children are eligible for admission at Sec. 15.1415.

Minn. Stat. Ann., Secs. 128A.01 thru 128A.07, nonresident deaf or blind children are eligible for admission at Sec. 128A.07.

Mo. Rev. Stat., Secs. 162.670 thru 162.810, nonresident blind, deaf, or severely handicapped children are eligible for admission at Sec. 162.735.

Mont. Rev. Codes Ann., Secs. 20-8-101 thru 20-8-107, nonresident blind or deaf children are eligible for admission at Sec. 20-8-107.

Neb. Rev. Stat., Secs. 79-1901 thru 79-1914, nonresident deaf children are eligible for admission at Sec. 79-1904; Secs. 79-2001 thru 79-2011, nonresident blind children are eligible for admission at Sec. 79-2004.

N.M. Stat. Ann., Secs. 21-6 thru 21-6-3, nonresident deaf children are eligible for admissions at Sec. 21-6-2; but Secs. 21-5-1 thru 21-5-23 pertaining to blind children do not contain a clear prohibition on the admission of nonresident blind children. Sec. 21-5-1 describes the purpose of the school as providing "education of the blind of the state" but Sec. 21-5-5 gives the school board of regents discretion to admit "any person" in certain age categories.

N.C. Gen. Stat.,Secs. 115-321 thru 115-334, nonresident blind children are eligible for admission at Sec. 115-327; Secs. 115-336 thru 115-342, nonresident deaf children are eligible for admission at Sec. 115-340.

N.D. Cent. Code, Secs. 25-06-01 thru 25-06-09, nonresident blind children are eligible for admission at Sec. 25-06-06; Secs. 25-07-01 thru 25-07-11, nonresident deaf children are eligible for admission at Sec. 25-07-05.

Okla. Stat. Ann., Title 70, Secs. 1721 thru 1725, nonresident blind children are eligible for admission at Sec. 1724.

Pa. Stat. Ann., Title 24, Secs. 2601 thru 2624, nonresident deaf or blind children are eligible for admission at Sec. 2602.

R.I. Gen. Laws Ann., Secs. 16-26-1 thru 16-26-11, nonresident deaf children are eligible for admission at Sec. 16-26-7.

S.D. Comp. Laws Ann., Secs. 13-61-1 thru 13-61-9, nonresident blind children are eligible for admission at Sec. 13-61-5; Secs. 13-62-1 thru 13-62-14, nonresident deaf children are eligible for admission at Sec. 13-62-6.

Tenn. Code Ann., Secs. 49-3001 thru 49-3027, nonresident blind children are eligible for admission at Sec. 49-3009.

Utah. Code Ann., Secs. 65-3-1 thru 64-3-18.9, nonresident deaf children are eligible for admission at Sec. 64-3-3; nonresident blind children are eligible for admission at Sec. 64-3-17.

Wash. Rev. Code, Secs. 72.40.010 thru 72.40.100, nonresident deaf or blind children are eligible for admission at Sec. 72.40.050.

W.Va. Code Ann., Secs. 18-17-1 thru 18-17-9, noneresident deaf or blind children are eligible for admission per Attorney General's Opinion No. 331, p. 46 (1958).

Wis. Stat. Ann., Secs. 115.52 thru 115.53, nonresident deaf or blind children are eligible for admission at Sec. 115.52.

52. Fla. Stat. Ann., Secs. 242.331 thru 242.332 are ambiguous as to whether nonresident deaf or blind children are eligible for admission.

Idaho Code, Secs. 33-3401 thru 33-3408 are ambiguous as to whether nonresident deaf or blind children are eligible for admission.

Me. Rev. Stat. Ann., Title 20, Sec. 3122 is ambiguous as to whether nonresident deaf or blind children are eligible for admission.

Md. Educ. Code Ann., Secs. 8-301 thru 8-310 are ambiguous as to whether nonresident deaf or blind children are eligible for admission.

N.M. Stat. Ann., Secs. 21-5-1 thru 21-5-23 are ambiguous as to whether nonresident blind children are eligible for admission.

Okla. Stat. Ann., Title 70, Secs. 1731 thru 1746 are ambiguous as to whether nonresident deaf children are eligible for admission.

Ore. Rev. Stat., Sec. 346.010 is ambiguous as to whether nonresident deaf or blind children are eligible for admission.

Tenn. Code Ann., Secs. 49-3101 thru 49-3112 are ambiguous as to whether nonresident deaf children are eligible for admission.

Tex. Educ. Code, Secs. 11.01 thru 11.16 are ambiguous as to whether nonresident deaf or blind children are eligible for admission.

Va. Code Ann., Secs. 23-254 thru 23-260 are ambiguous as to whether nonresident deaf or blind children are eligible for admission.

W.Va. Code Ann., Secs. 18-17-1 thru 18-17-9; but per 46 Op. A.G. 331 (1958) ambiguity construed to permit admissions of nonresident deaf or blind children.

53. Ind. Code, Secs. 16-7-6.5-1 thru 16-7-6.5-13, admission limited to blind children with residence in state at Sec. 16-7-6.5-5; Secs. 16-7-13-1 thru 16-7-13-10, admission limited to deaf children with residence in state at Sec. 16-7-13-5.

Miss. Code Ann., Secs. 43-5-1 thru 43-5-21, admissions are limited to deaf or blind children with residence in state at Sec. 43-5-15.

N.J. Rev. Stat., Secs. 18A:61-1 thru 18A:61-4, admissions are limited to deaf children with residence in state at Sec. 18A:61-3.

Ohio Rev. Code Ann., Secs. 3325.01 thru 3325.07, admissions are limited to blind children with residence in state at Sec. 3325-02 and deaf children with residence in state at Sec. 3325.011.

S.C. Code Ann., Secs. 59-47-10 thru 59-47-110, admissions are limited to deaf or blind children with residence in state at Sec. 59-47-70.

Wyo. Stat. Ann., Secs. 21-14-104 thru 21-14-106, admissions are limited to deaf or blind children with residence in state at Sec. 21-14-106.

54. Ariz. Rev. Stat. Ann., Sec. 15-834.

55. Me. Rev. Stat. Ann., Title 20, Sec. 3125(6).

56. Ark. Stat. Ann., Sec. 80-2401.1 permits deaf-blind children at the facilities to be sent out of state; nonresident children are eligible for admission at Sec. 80-2407; but Secs. 80-2201 thru 80-2223, 80-2412 and 80-2414 add some ambiguity on the general admissibility of nonresident deaf or blind children. Fla. Stat. Ann., Sec. 242.332 permits deaf or blind children at the facilities to be sent out of state. Wis. Stat. Ann., Sec. 115-53 permits deaf-blind children at state facilities to be sent out of state.

57. Alaska Stat., Sec. 14.30.285(c). See also, Conn. Gen. Stat. Ann., Sec. 10-76d(f); Ga. Code Ann., Sec. 32-605a(c)(1), (2), and (3); Ind. Code, Sec. 20-1-6-19; Kans. Stat. Ann., Secs. 72-967(a) and 72-968; Ky. Rev. Stat. Ann., Sec. 167.230; La. Rev. Stat. Ann., Sec. 17:1944; Mass. Gen. Laws Ann., Ch. 71B, Sec. 10; Mich. Stat. Ann., Sec. 15.41751(1); Minn. Stat. Ann., Sec. 120.17 (subdiv. 2); Mont. Rev. Codes Ann., Sec. 20-7-422; Nev. Rev. Stat., Sec. 395.010(a); N.H. Rev. Stat. Ann., Secs. 186-A:8(I) and 186-B:4(IV); N.J. Rev. Stat., Sec. 18A:46-14; N.Y. Educ. Law, Secs. 4401(2)(f) and (h), and 4407; N.D. Cent.Code, Sec. 15-59-07; Okla. Stat. Ann., Title 70, Sec. 13-108(c); Ore. Rev. Stat., Sec. 343.055(2)(b); Pa. Stat. Ann., Title 24, Sec. 13-1371; R.I. Gen. Laws Ann., Secs. 16-25-5 and 16-25-1; S.C. Code Ann., Sec. 59-33-50; S.D. Comp. Laws Ann., Sec. 13-37-13; Tenn. Code Ann., Secs. 49-2938, 49-2939, 49-2943, and 49-2944; Tex. Educ. Code, Sec. 11.27(d); Va. Code Ann., Secs. 22-10.6 and 22-10.10; Wis. Stat. Ann., Secs. 115.53 and 115.82(7); Wyo. Stat. Ann., Sec. 21-14-104; D.C. Code Encycl. Ann. Sec. 21-1118.

58. R.I. Gen. Laws Ann., Sec. 16-25-5.

59. See e.g., Miss. Code Ann., Sec. 37-7-81; Kans. Stat. Ann., Secs. 72-7201 thru 72-7208.

60. E.g., Ky. Rev. Stat. Ann., Sec. 167.150.

61. E.g., Wyo. Stat. Ann., Sec. 21-14-102.

62. E.g., Ga. Code Ann., Sec. 32-605a(c).

63. E.g., Va. Code Ann., Secs. 22-10.6, 22-10.8(a), and 22-10.10.

64. R.I. Gen. Laws Ann., Sec. 16-25.1.

65. E.g., Ind. Code, Sec. 20-1-6-19.

66. E.g., R.I. Gen. Laws Ann., Sec. 16-26-5.

67. Ariz. Rev. Stat. Ann., Sec. 15-1015(f); Ark. Stat. Ann., Secs. 80-2112 and 80-2113; Calif. Educ. Code, Secs. 56000 thru 58685; Colo. Rev. Stat. Ann., Sec. 22-20-109; Del. Code Ann., Title 14, Secs. 3101(2) and 3124; Fla. Stat. Ann., Sec. 230.23(4)(m); Hawaii Rev. Stat., Sec. 301-24; Idaho Code, Sec. 33-2004; Ill. Rev. Stat., Ch. 122, Sec. 14-6; Iowa Code Ann., Secs. 281.3 and 281.4; Me. Rev. Stat. Ann., Title 20, Secs. 3121(2) and 3125(2); Md. Educ. Code Ann., Sec. 8-409(a); Miss. Code Ann., Secs. 37-23-1 thru 37-23-111; Neb. Rev. Stat., Secs. 43-626,

43-642 and 43-607; N.M. Stat. Ann., Secs. 22-13-8(B) and (C); N.C. Gen. Stat., Sec. 115-384; Ohio Rev. Code Ann., Sec. 3323.08(F); Utah Code Ann., Sec. 53-18-2; Vt. Stat. Ann., Title 16, Secs. 2944 and 2948(h), but see Sec. 2949; Wash. Rev. Code Ann., Secs. 28A.13.030 and 28A.13.045; W.Va. Code Ann., Sec. 18-20-2.

68. Ariz. Rev. Stat. Ann., Sec. 15-1015(f).

69. Education for All Handicapped Children Act of 1975, P.L. 94-142, 20 U.S.C., Sec. 1401.

70. Ala. Code, Sec. 16-39-6(5).

71. Mo. Rev. Stat., Sec. 162.705.

72. See Appendix F.

73. E.g., Ohio Rev. Code Ann., Secs. 5103.03 and 5139.37.

74. E.g., Tex. Rev. Civ. Stat., Art. 695a-1.

75. Social Security Act, 42 U.S.C. 608.

76. Va. Code Ann., Sec. 63.1-219.5.

77. See Appendix B of this report; See also, Ohio Rev. Code Ann., Sec. 5103.25, as a representative example.

78. Wisconsin Attorney General Opinion, No. 603, p. 36.

79. S.D. Compiled Laws Ann., Sec. 26-6-10.

80. N.H. Rev. Stat. Ann., Sec. 170-E:18; Nev. Rev. Stat., Sec. 424.070.

81. Okla. Stat. Ann., Title 10, Sec. 405; Ore. Rev. Stat., Sec. 418.2203.

82. E.g., Vt. Stat. Ann., Title 18, Sec. 7314.

83. E.g., Va. Code Ann., Sec. 37.1-121.

84. E.g., Vt. Stat. Ann., Title 18, Sec. 7617.

85. E.g., Utah Code Ann., Sec. 64-7-14.

86. Ill. Rev. Stat., Ch. 91-1/2, Sec. 100-15.1.

87. State ex rel. Juvenile Department of Multnomah County v. L., 546 P.2d 153, p. 159 (Ct. of App. Ore., 1976).

88. Comm. ex rel. Lembeck v. Lembeck, 83 Pa. Super. 305 (1924), at pp. 307-8.

89. Butler v. Butler, 143 A. 471 (Sup. Ct. N.H., 1928), p. 473; see also, Watkins v. Brannon, 309 So. 2d 464 (Ct. of Civ. Apps. Ala., 1974), cert. denied, Mar. 6, 1975, 309 So. 2d 468 (Sup. Ct. Ala., 1975).

90. American Jurisprudence Second, vol. 16, "Conflict of Laws," Secs. 4-7; Corpus Juris Secundum, vol. 14A, "Conflict of Laws," Sec. 3.

91. Brigette M. Bodenheimer, "The Uniform Child Custody Jurisdiction Act," Family Law Quarterly, vol. 3, no. 4 (Dec. 1969), pp. 304-16. The text of the act can be found following the article.

92. Alaska Stat., Secs. 25.30.010 thru 25.30.910; Calif. Civ. Code (West, Secs. 5150 thru 5174; Colo. Rev. Stat. Ann., Secs. 14-13-101 thru 14-13-126; Del. Code Ann., Title 13, Secs. 1901 thru 1925; Fla. Stat. Ann., Secs. 61.1302 thru 61.1348; Hawaii Rev. Stat., Secs. 583-1 thru 583-26; Idaho Code, Secs. 5-1001 thru 5-1025; Ind. Code, Secs. 31-1-11.61 thru 31-1-11.6-24; Iowa Code Ann., Secs. 598A-1 thru 598A-25; Md. Code Ann., Art. 16, Sec. 1-207; Mich. Stat. Ann., Secs. 27A.651 thru 27A.673; Minn. Stat. Ann., Secs. 518A.01 thru 518A.25; Mont. Rev. Code, Sec. 48-331; N.D. Cent. Code, Secs. 14-14-01 thru 14-14-26; Ohio Rev. Code Ann., Secs. 3109.21 thru 3109.37; Ore. Rev. Stat., Secs. 109.700 thru 109.930; Pa. Stat. Ann., Title 11, Secs. 2301 thru 2325; Wis. Stat. Ann., Secs. 822.01 thru 822.25; Wyo. Stat. Ann., Secs. 20-143 thru 20.167.

93. Wyo. Stat. Ann., Sec. 14-5-108. See also, Del. Code Ann., Title 31, Sec. 307; Ore. Rev. Stat., Sec. 418.290; S.D. Compiled Laws Ann., Sec. 26-6-10.

94. Pfortenhauer v. Hunter, 536 P.2d 923 (Sup. Ct. Okla., 1975), p. 928.

95. U.S. Constitution, Art. 4, Sec. 1; see, generally, American Jurisprudence Second, vol. 16, "Constitutional Law," Secs. 585 thru 591.

96. For discussions of modifiable decrees, final judgments, and full faith and credit, see, Restatement (Second) of Conflict of Laws, Sec. 109 (1941); Restatement of Judgments, Sec. 41, comment a (1942); and tentative drafts, Restatement (Second) of Judgments, Sec. 41, comments a, c, d, and f (1973).

97. S. N. Katz, Where Parents Fail (Boston, Mass.: Beacon Press, 1971).

98. L. S. Tabakian, "Increasing the Rights of Foster Parents," University of Pittsburgh Law Review, vol. 36, no. 3 (Spring 1975), pp. 715-27. Recent cases involving foster parents include: Bennett v. Jeffreys, 356 N.E.2d 277, 3 FLR 3009 (Ct. Apps. N.Y., 1976); Ross v. Hoffman, 372 A.2d 582, 3 FLR 2434 (Ct. Apps. Md., 1977); but see, Smith v. Org. of Foster Families, 431 U.S. 816, 53 L. Ed. 2d 14, 97 S. Ct. 2094 (1977). For other recent cases, see note at 3 FLR 1122.

99. "Long-Arm Jurisdiction in Alimony and Child Custody Cases," Note, Columbia Law Review, vol. 73, no. 2 (Feb. 1973), pp. 289-317; Cal L. Raup, "State Court Jurisdiction: The Long-Arm Reaches Domestic Relations Cases," Texas Tech Law Review, vol. 6, no. 3 (Spring 1975), pp. 1021-54. For current cases on the long-arm statutes in the family law area see 3 FLR 1151.

100. Okla. Stat. Ann., Title 12, Sec. 1701.03.

101. See, for example, Ga. Code Ann., Sec. 99-211(b)(3); Wis. Stat. Ann., Sec. 48.98. For a discussion which highlights many of the terminological vagaries of the import/export statutes, see Margaret V. Turano, "Black Market Adoptions," The Catholic Lawyer, vol. 22, no. 1 (Winter 1976), pp. 48-69.

102. Ala. Code, Sec. 38-7-15.

103. South Carolina Attorney General's Opinion, No. 3217, pp. 200 (1970-71).

104. Conn. Gen. Stat. Ann., Sec. 17-51.

105. Ill. Rev. Stat., Title 23, Sec. 2226(a).

106. Ala. Code, Sec. 38-7-15.

107. Mass. Gen. Laws Ann., Ch. 119, Sec. 36.

108. S.C. Code Ann., Sec. 71-207.

109. Wyo. Stat. Ann., Sec. 14-4-108; N.D. Cent. Code, Sec. 40-12-14.1.

110. Mo. Rev. Stat., Sec. 210.010.

111. W.Va. Code Ann., Sec. 49-2-15.

112. Del. Code Ann., Title 31, Sec. 307.

113. N.J. Rev. Stat., Sec. 9:7-1.

114. Ore. Rev. Stat., Sec. 418.290.

115. N.C. Gen. Stat., Sec. 110-50.

116. R.I. Gen. Laws Ann., Sec. 14-7-3; Del. Code Ann., Title 13, Sec. 926.

117. Ga. Code Ann., Sec. 99-215; Minn. Stat. Ann., Sec. 257.05; R.I. Gen. Laws Ann., Sec. 40-12-5.

118. Kan. Stat. Ann., Sec. 38-315; Ky. Rev. Stat. Ann., Sec. 199.350; Neb. Rev. Stat., Sec. 43-704.

119. Tenn. Code Ann., Sec. 14-1505.

120. Ind. Code, Sec. 12-3-21-1.

121. N.H. Rev. Stat. Ann., Sec. 170-B:23.

122. N.D. Cent. Code, Sec. 40-12-14.1.

123. Wis. Stat. Ann., Sec. 48.98.

124. Mass. Gen. Laws. Ann., Ch. 119, Sec. 36.

125. Tenn. Code Ann., Sec. 14-1505.

126. Kan. Stat. Ann., Sec. 38-315; Mo. Rev. Stat., Sec. 210.010; Neb. Rev. Stat., Sec. 43-704.

127. N.J. Rev. Stat., Sec. 9:7-1.

128. Del. Code Ann., Title 13, Sec. 926.

129. E.g., Ind. Code, Sec. 12-3-21-5 ("relatives"); Mass. Gen. Laws Ann., Ch. 119, Sec. 36 ("blood or marriage"); Minn. Stat. Ann., Sec. 257.05(2) ("specified relatives").

130. N.D. Cent. Code, Sec. 40-12-14.1.

131. N.J. Rev. Stat., Sec. 9:7-4.

132. Conn. Gen. Stat. Ann., Sec. 17-51(2).

133. Fla. Stat. Ann., Sec. 63.207.

134. Minn. Stat. Ann., Sec. 257.06.

135. N.C. Gen. Stat., Sec. 110.52; Tenn. Code Ann., Sec. 14-1508.

136. Va. Code Ann., Sec. 63.1-207.1.

137. Fla. Stat. Ann., Sec. 63-207; Minn. Stat. Ann., Sec. 257.06; Neb. Rev. Stat., Sec. 43-215.

138. Robert A. Leflar, The Law of Conflict of Laws (Indianapolis: Bobbs-Merrill, 1959), Secs. 12, 178, 179, and 181; Herbert F. Goodrich and Eugene F. Scoles, Handbook of the Conflict of Laws, 4th ed. (St. Paul, Minn.: West Publishing Co., 1964), Secs. 37 and 38.

139. Joseph H. Beale, A Treatise on The Conflict of Laws (New York: Baker, Voorhis & Co., 1935), Secs. 120.8 and 120.9.

140. Social Security Act, 42 U.S.C. 608; Va. Code Ann., Sec. 63.1-219.5.

141. Goodrich and Scoles, Handbook of the Conflict of Laws, op. cit., Sec. 93.

142. Leflar, The Law of the Conflict of Laws, op. cit., Secs. 136 and 138.

143. *In re Mullins*, 298 N.W.2d 56 (Minn. Sup. Ct. 1980).

144. Ibid., p. 62.

145. *Milligan* v. *State, ex rel. Children's Home of Cincinnati, Ohio*, 97 Ind. 355 (1884).

146. *New York Foundling Hospital* v. *Gatti*, 9 Ariz. 105, 79 Pac. 231 (1905), 203 U.S. 429, 51 L. Ed. 254, 27 Sup. Ct. 53 (1906).

147. Ibid., 79 Pac., p. 237.

148. *New York Foundling Hospital* v. *Gatti*, 203 U.S. 429, 51 L. Ed. 254, 27 Sup. Ct. 53 (1906), pp. 439-40.

149. *Child Saving Institute* v. *Knobel*, 37 S.W.2d 920 (1931).

150. Ibid.

151. *Gary W. et al.* v. *State of Louisiana*, 437 F. Supp. 1209 (D.C. La., 1976).

152. U.S. Constitution, Article 1, Sec. 2, Cl. 3.

153. *American Jurisprudence Second*, "Constitutional Law," Sec. 173.

154. *U.S.* v. *Moriarity*, 106 F. 886 (C.C.N.Y., 1901).

155. *U.S.* v. *Little*, 321 F. Supp. 388,(D.C. Del. 1971).

156. 13 U.S.C., Sec. 141.

157. Ibid., Sec. 101.

158. Ibid., Secs. 223 and 224.

159. Mann Act, 18 U.S.C., Secs. 2421 et seq.

160. 1964 Civil Rights Act, Secs. 201 thru 207, 42 U.S.C., Secs. 2000a thru 2000a(6).

161. *Heart of Atlanta Motel, Inc.* v. *U.S.*, 379 U.S. 241, 85 S. Ct. 348, L. Ed. 2d 25 (1964).

CHAPTER 4

INTERSTATE COMPACTS[1]

For nearly 200 years, states have been entering into interstate compacts as a means of obtaining mutually binding cooperation in order to reduce interstate boundary conflicts, improve client services, reduce state costs, or increase state revenues among the signatory states.[2] There are currently three interstate compacts that pertain to the interstate placement of children: the Interstate Compact on Juveniles (commonly referred to as the Juvenile Compact), the Interstate Compact on the Placement of Children (the Placement Compact), and the Interstate Compact on Mental Health (the Mental Health Compact). All 50 states and the District of Columbia are members of the Juvenile Compact, the last state enacting it in 1973. The Placement Compact included 46 signatory states by the end of 1980 and the Mental Health Compact was enacted by 44 states and the District of Columbia at that time.[3] Table 1 reflects each state's membership status in relation to these three compacts, as well as the date of compact enactment. It is apparent from this table that all but one state, Nevada, belongs to at least two of these compacts and that 41 states belong to all three interstate compacts.

The interstate compacts offer legal safeguards for the placing party, the sending and receiving states, and the children being placed, by:

- Clarifying jurisdictional responsibilities.
- Assuring that states have knowledge of a child's location.
- Formalizing payment and monitoring requirements.
- Helping to assure the placement setting as appropriate for the child's needs and safety.
- Opening channels which can be used to return a child to the state of residence if the need arises.

Jurisdictional authority of a sending agency or court is a critical aspect of interstate compact utilization. Although the full faith and credit clause of the U.S. Constitution is:

> sometimes thought of as the vehicle for the extension of jurisdictional authority, it does not, in fact, extend jurisdiction where it does not otherwise exist. Although the jurisdiction of the sending state's court may be recognized by the receiving state, it is powerless to enforce the jurisdictional authority of the sending state's court or to enforce subsequent orders of that court through Full Faith and Credit alone.[4]

In addition, often a state's membership in an interstate compact forms the core of its regulatory policy on out-of-state placement.

TABLE 1. INTERSTATE COMPACT MEMBERSHIP: THE STATES AND YEAR OF ENACTMENT

State	Juvenile Compact	Placement Compact	Mental Health Compact
Alabama	1965	1980	1975
Alaska	1960	1976	1959
Arizona	1961	1976	--
Arkansas	1961	1979	1959
California	1955	1974	--
Colorado	1957	1975	1965
Connecticut	1957	1967	1955
Delaware	1953	1969	1962
District of Columbia	1970	--	1972
Florida	1957	1974	1971
Georgia	1972	1977	1973
Hawaii	1955	--	1967
Idaho	1961	1976	1961
Illinois	1973	1974	1965
Indiana	1957	1978	1959
Iowa	1961	1967	1962
Kansas	1965	1976	1967
Kentucky	1960	1966	1958
Louisiana	1958	1968	1958
Maine	1955	1961	1957
Maryland	1966	1975	1963
Massachusetts	1955	1963	1956
Michigan	1958	--	1965
Minnesota	1957	1973	1957
Mississippi	1958	1976	--
Missouri	1955	1975	1959
Montana	1967	1975	1971
Nebraska	1963	1974	1969
Nevada	1957	--	--
New Hampshire	1957	1965	1957
New Jersey	1955	--	1956
New Mexico	1973	1977	1969
New York	1955	1960	1956
North Carolina	1965	1971	1959
North Dakota	1969	1963	1963

TABLE 1. (Continued)

State	Juvenile Compact	Placement Compact	Mental Health Compact
Ohio	1957	1976	1959
Oklahoma	1967	1974	1959
Oregon	1959	1975	1957
Pennsylvania	1956	1973	1961
Rhode Island	1957	1967	1957
South Carolina	1970	1980	1959
South Dakota	1961	1974	1959
Tennessee	1955	1974	1971
Texas	1965	1975	1969
Utah	1955	1975	--
Vermont	1968	1972	1959
Virginia	1956	1975	--
Washington	1955	1971	1965
West Virginia	1963	1975	1957
Wisconsin	1957	1978	1965
Wyoming	1957	1963	1969

-- denotes Nonmembership at time of study.

This chapter includes an overview of the compacts' legal basis, general construction, procedural mechanisms and specific content, followed by a discussion of major administrative and implementation issues. The primary focus of this chapter is on the relevance of interstate compacts to sending children out of state, although they do pertain to states receiving children as well. Similarly, because of the nature of the Academy's study of out-of-state placement, the placement of children with natural parents will not be specifically discussed, although this type of placement is also under the purview of interstate compacts.

THE LEGAL BASIS FOR INTERSTATE COMPACTS

Interstate cooperation may be obtained through three types of reciprocal instruments: compacts, agreements, and laws. Of the three, only the interstate compact establishes a relationship mutually adopted by state legislatures and sanctioned by constitutional law.

Interstate compacts require the legislative adoption of model statutes that have, in effect, been agree upon by the states in advance of passage. The legislatures usually must adopt the verbatim compact language presented to them or simply refuse to participate. Some limited variations are permitted, as in the case of states adopting or rejecting earmarked sections of subsequent amendments without affecting their compact membership. In addition, enabling legislation, which establishes the administrative machinery for carrying out the compact's intent, may vary in accordance with state procedures. In some states, statutory definitions may vary, such as the age limits of juveniles or the variations between misdemeanors and felonies. These differences must be resolved through procedures designed to implement compact intent. The process of legislative sanction is at times a slow and laborious one, but once a compact has obtained the necessary legislative endorsement, the possibility of a misunderstanding among the states is more remote.

There is a wealth of case law sustaining compact compliance, as well as a long history of successful compact adoption and implementation. Compacts have withstood numerous challenges and, although the full potential of interstate cooperation has yet to be reached, there is ample evidence to support the prediction of continued growth and application of the compact concept.

Three major litigations have transpired which firmly establish interstate compacts as an effective means of obtaining state cooperation for mutual citizen benefits or for resolution of interstate conflicts. In each of the three landmark decisions listed below, the U.S. Supreme Court reaffirmed the constitutionality of interstate compacts and provided guidelines for continuing interstate cooperation.[5]

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(3) Fiscal and organizational requirements for compact operations.
(4) Exceptions of law and operations required within the compact.
(5) A severability clause, which enables participating jurisdictions to identify specific areas of nonparticipation without voiding the entire compact.
(6) Time and notification requirements for compact entry and withdrawal.
(7) An amendment procedure.

Generally, a specific enabling legislative model is also presented. The reason, of course, for such specificity is to assure that each jurisdiction adopting the compact does so uniformly to avoid any default because of language alteration. For example, New Hampshire adopted the Juvenile Compact, but its legislature failed to utilize the proper compact model. This lack of compatibility of language and intent with all other member jurisdictions necessitated the withdrawal of the first New Hampshire statute and the subsequent adoption of the verbatim compact language. The requirement of commonality of language, especially in substantive areas of compact construction, reinforces the relationship between compacts and the law of contracts when subsequent judicial interpretation is required.

Most reciprocal service delivery compacts do not require a common agency or individual administrator within the participating states. They do require that a compact administrator be appointed. Normally, national associations of administrators evolve for the purpose of resolving issues concerning compact operations. In some compact organizations, a secretariat is designated, such as the Council of State Governments, the American Public Welfare Association, the American Association of Motor Vehicle Administrators, or other similar national organizations. In other compacts, the administrators' association provides its own secretariat services internally. Federal agencies, such as the Department of Health and Human Services, the Law Enforcement Assistance Administration, and the Department of Transportation have, from time to time, provided funds for secretariat services to support the mechanisms through which the compacts are maintained and updated.

States participating in some compacts have established interstate governing boards, agencies, and authorities for the purpose of carrying out the business of the compacts involved. These agencies are empowered, in many instances, with bonding, taxing, and regulatory authorities that supersede general state statutes granting such powers. The New York Port Authority Compact of 1921 is a case in point. The Port Authority Compact provided New York and New Jersey with a cooperative agency that could accomplish joint planning, administration, and acquisition that was beyond the jurisdictional authority of the individual state governments. The Port Authority now owns and operates airports, tunnels, and bridges, and has withstood the challenge of both state court systems as to its capacity to tax, bond, and own property, independent of both New Jersey and New York State governments. Control of the Port Authority and other like agencies still lies within the state legislatures that established them, although legislatures vary in the extent to which they exercise their oversight authority.

In Virginia v. Tennessee (1893), the two states informally drew up a contract which established their mutual border.[6] In a subsequent interstate compact, the two states formalized their initial agreement and did so without an official congressional act of approval. Congress claimed that its approval of the compact was constitutionally prescribe. The Supreme Court ruled otherwise, declaring that congressional approval was "tacitly" given to the Virginia-Tennessee Compact when Congress utilized the border established by the compact as a basis for defining federal judicial districts. More to the point, perhaps, was the Court's test for determining when congressional approval was needed. It held that, even though Congress had "tacitly" agreed or implied its consent to the boundary compact, it was not really necessary so long as the "political balance" of the Union was not disturbed. The Court's opinion helped provided constitutional legitimacy for future compacts.

In the decision of State ex rel. Dyer v. Sims (1959), the Court utilized the theory of contracts as an analogue to compact adoption.[7] That is to say, an offer is initiated by two or more states of eligible joinder to legislatively adopt a given compact written in the same or comparable language. Acceptance of the contract (compact) is executed by binding legislative acts of the participating jurisdictions which must agree to all provisions affected and, in particular, must obtain necessary legislation to withdraw or amend. Although contract law is maintained in all compacts, so is the option of severability. In cases where the severability clause is enacted, only those elements adopted are considered enforceable by other states.

Virginia v. West Virginia (1918) evolved out of an altercation concerning the partial assumption of Virginia's accumulated debt by West Virginia as a condition of independence.[8] The major issue was enforcement of compact precepts upon signatory states by the U.S. Supreme Court. West Virginia had been reluctant to repay that portion of Virginia's debt assumed by compact agreement prior to its acquisition of statehood. Virginia claimed, and was upheld by the U.S. Supreme Court, that not only should the debt be paid by West Virginia as a compact obligation, but also that the Supreme Court was empowered to enforce the compact provisions. Since then, issues of compact maintenance have been relatively nonexistent. Not only does the U.S. Supreme Court resolve multistate jurisdictional disputes, but compact elements are considered superior to conflicting laws of joinder states and are enforceable by the U.S. Supreme Court.

COMPACT CONSTRUCTION

Most compacts contain a series of similar basic elements. These elements are usually translated into compact articles that collectively constitute the compact's subject matter. The articles usually put forth:

(1) A purpose or rationale for compact adoption.
(2) Procedures, obligations, and commitments required of the participating jurisdictions.

Two excellent discussions on the phenomenon of interstate compacts may be found in The Interstate Compact Since 1925 and The Law and Use of Interstate Compacts.[9] The compacts, according to the authors, provide a "moral force" for interstate cooperation which favorably affects all citizens and government services in participating jurisdictions. There are also authors who view the compact concept with suspicion and charge that citizen, executive, and legislative prerogatives may be usurped by compact administrators. For instance, Marian Ridgeway, in Interstate Compacts: A Question of Federalism, questions a blanket compact endorsement.[10] A broader analysis of law and its relation to interstate placement can be found in "The Law of Interstate Placements of Children."[11]

GENERAL PROCEDURES FOR ARRANGING OUT-OF-STATE PLACEMENTS THROUGH AN INTERSTATE COMPACT

Procedures utilized under all three compacts for transferring or placing a child are quite similar and include the following general steps.

Step 1. A court or social agency determines that a child, over which it has jurisdiction or custody, needs some type of assistance. For whatever reason, a decision is made that the child should be placed in another state. In some cases, a specific institution or other setting is selected and contacted to determine the child's acceptability. In other cases, the child's particular service needs are clearly understood, but no facility is identified by the sending agency, either because many facilities could be utilized appropriately or because the child's needs are so unusual that no facility known to the sending agency would seem to satisfy the child's needs.

Step 2. In either event, the interstate compact administrator in the child's resident state is contacted.

Step 3. The cognizant compact administrator will contact the corresponding administrator in another state or in several other states, depending upon whether a specific facility or other setting has been identified for the child's placement. The correspondence will typically include a request for assistance; information about the types of services being sought; copies or the child's records, including medical and social histories; and some indication about the maximum per diem allowable, as well as identification of the financially responsible party.

Step 4. The receiving state compact administrator determines the placement request's completeness.

Step 5. Upon accepting the placement request, the receiving state's compact administrator will forward the information about the child either to the identified facility or to several facilities that generally meet the programmatic and per diem criteria established by the sending state administrator or to the court/agency to be used for a child's supervision in a private home setting. The channels for communication have now been fully established.

Step 6. Once the facility or supervising court or agency indicates whether it will accept or reject the child, its response is delivered to the court or social agency in the sending state through the two compact offices.

Step 7. At this point, assuming at least one affirmative response has been received for placement, the sending agency may either begin or continue direct contact with the selected facility, or indicate through the compact offices its willingness to place the child. Assumed in this scenario is the proper licensing or accreditation of the receiving facility, which is recognized by both compact administrators. In some cases, a preplacement investigation is undertaken by the receiving state compact administrator in order to assure the sending state administrator and sending agency of the caliber of services provided.

Step 8. It is also possible that both sending and receiving state compact administrators will actually participate in transporting the child to and from the airport or, in other similar ways, become personally involved in assuring a smooth transfer between the sender and the receiving facility or other setting.

Depending upon requests made of them, compact administrators will remain only intermittently involved in the case, usually to periodically monitor the placement and to forward progress reports, or to intervene in cases where complaints are made about services or payments. If requested to do so, compact administrators will also help to effect the child's return, after the placement has been terminated.

The particular requirements and procedures of each of the three compacts involving the interstate placement of children are discussed in the following sections.

AN ANALYSIS OF COMPACTS CONCERNING THE PLACEMENT OF CHILDREN

Each of the three interstate compacts relevant to the placement of children has its own history, specific goals, service foci, and related issues. This section will discuss these elements within each compact, based on information provided in the compact texts, their administrative manuals, and from the results of the Academy's national survey and seven case studies, also presented in this volume.

Interstate Compact on Juveniles

This compact provides a means for member states to arrange the out-of-state probation or parole supervision of juveniles and to implement procedures for their return to the resident state.

History

The Interstate Compact on Juveniles (Juvenile Compact) was patterned after the Interstate Compact for the Supervision of Parolees and Probationers (Parole and Probation Compact), which was initiated following the Crime Control Consent Act of 1934.[12] Until the Crime Control Consent Act of 1934, adult and juvenile parolees and probationers were restricted to in-state travel unless "sun-down parole" or a "gentleman's agreement" for supervision could be reached between two state paroling authorities. In 1937, 25 states signed the Parole and Probation Compact and, by 1951, all states were members.

It soon became evident that the Parole and Probation Compact did not adequately meet the special needs of juveniles requiring interstate supervision. Recognizing the advisability for an interstate compact to provide for special juvenile circumstances, the Probation and Parole Compact Administrators Association, the National Council of Juvenile Court Judges, the National Association of Attorneys General, and a number of other concerned organizations cooperated with the Council of State Governments in drafting the Juvenile Compact. In January 1955, the compact was completed and by 1973 all the states, along with the District of Columbia, had adopted it. Although Congress had provided consent for the Parole and Probation Compact through the Crime Control Consent Act of 1934, the Senate Judiciary Committee determined that congressional consent was unnecessary for the Juvenile Compact.[13] The committee's reasoning was based upon the Virginia v. Tennessee "political balance" theory which determined that, so long as the federal system was not disturbed by the compact, congressional consent for joinder was unnecessary.

The authors of the 1955 Juvenile Compact took cognizance of state-to-state variations in guardianship responsibility, differences in procedural and supervisory practices, definitional differences, minority age limits, and a number of other issues pertaining specifically to juveniles. It has remained viable since that time, despite changes in states' juvenile codes.

Initiated by various parties involved in juvenile justice, optional amendments have been added to the original compact to provide for the return of runaways (Article XVI or the Beckman Amendment), for rendition to the requesting state (Rendition Amendment), and for out-of-state confinement (Out-of-State Confinement Amendment).[14] Amendments are first considered by the Association of Juvenile Compact Administrators and, if accepted, are recommended for adoption to the states. Each amendment is only effective in states which have elected to participate in it. By late 1978, 21 states had adopted the runaway amendment, 23 states had adopted the amendment on rendition, and 12 states had adopted the out-of-state confinement amendment.[15]

Purposes

The stated purposes of the Juvenile Compact are grounded in an effort to "provide for the welfare and protection of juveniles and of the public," as stated in Article I, and include:

1. Provisions for the return of juvenile absconders and escapees to the state from which they absconded or escaped.
2. Provisions for the return of runaways to their home states.
3. Provisions for permitting out-of-state supervision of delinquent juveniles placed on probation or parole by the sending state.
4. Authorization for member state agreements for the cooperative care, treatment, and rehabilitation of juvenile delinquents placed in institutions outside of their state of original jurisdiction (sending state).

The principal functions of the Juvenile Compact, derived from these purposes, require separate procedures for both the sending and receiving state. Currently, the secretariat for the Association of Juvenile Compact Administrators is located at Sam Houston State University, Center for Crime and Delinquency, Huntsville, Texas. (Prior to 1976, the Council of State Governments served as secretariat.) The compact secretariat serves as a central record-keeping source, may provide technical assistance to compact administrators, and helps obtain or circulate legal opinions relating to compact use and applicability.

Relevant Components, Benefits, and Issues

Several portions of the Juvenile Compact are not immediately relevant to the Academy's study on the out-of-state placement of children, which excludes the return of runaways, absconders, and escapees to the home state. This exclusion also relates to youth whose rendition was arranged by states which have ratified the Rendition Amendment. Therefore, discussion of these portions of the compact will be limited and the reader is encouraged to refer to The Interstate Placement of Children: A Preliminary Report for more discussion of these areas.[16]

Basically, procedures outlined in the Juvenile Compact for the return of escapees from juvenile institutions, absconders from probation or parole supervision, or nondelinquent runaways help to assure that the rights of juveniles are protected, including the right to legal counsel. The procedures are also designed to provide a means for protecting the public, where necessary. Several factors relating to these procedures should be stressed. Efforts are made to assure due process safeguards for the youth involved, while attempting to arrange a voluntary return to the demanding or home state as provided for by Article VI. Arranging voluntary return avoids the more complex legal actions define in Articles IV and V. Also, since the passage of the federal Juvenile Justice and Delinquency Prevention Act of 1974, most states will not hold nondelinquent runaways or status offenders in secure settings pending receipt of the court of jurisdiction's requisition. Instead, custody is maintained in a shelter or other nonsecure setting. In all cases, disposal of any felony charges in the "asylum state" must be procured before the return is implemented.

Directly related to the Academy's study of out-of-state placement policies and practices are the portions of the Juvenile Compact relating to the out-of-state supervision of parolees and probationers and the out-of-state institutionalization of delinquent juveniles. Delinquent youth are more often supervised out of state while in the home of a relative or another party entitled to custody. When a delinquent juvenile is permitted to live in a residential setting in another state (the receiving state) while on probation or parole in the sending state, approval of the proposed setting and probation or parole supervision must be arranged through compact procedures outlined in Article VII. These compact procedures call for preplacement investigation, regular monitoring of the placement, and the extension of the full protections offered juveniles under the laws of a receiving state. It should be stated that, despite these steps, supervision transfer is often not seen as a placement by the sending agency. The extension of protection is of special value to juveniles who are in placement situations that are not adequate or are counterproductive. In cases where inappropriate placements are made under the aegis of the compact, there are procedures available to either change placements or place such juveniles under the protection of the local court in the same manner as if the juveniles in question were residents. The compact, in essence, extends all the protections and services of both states to juveniles receiving parole or probation supervision in a receiving state.

Sometimes administrative revocation hearings are held, with compact administrators or case supervisors serving as the authorized representatives of the sending states. If the decision is reached to revoke parole or probation, the receiving state initiates a return procedure similar to that utilized for the return of runaways, absconders, and escapees. The sending state then exercises the option to either have the delinquent returned or makes arrangements through the compact for confinement in the receiving state.

The Juvenile Compact also provides for the public confinement of a juvenile in another state. This may occur when a child on probation or parole is placed in a receiving state under the compact with the two signatory states mutually agreeing that the receiving state's facilities are better suited to a particular child's needs and a contract is signed providing for placement and payment by the sending state's responsible agency. Under Article X, the child must have been adjudicated delinquent and a hearing must be held regarding the transfer or placement. Other methods are possible for the confinement of a juvenile on probation or parole in a receiving state, two of which occur only after supervision is transferred to the receiving state through the compact. It should be noted that the Out-of-State Confinement Amendment provides for one of these methods.

Procedures for placing a juvenile delinquent in out-of-state confinement, either under the basic compact or the Out-of-State Confinement Amendment, are primarily the same. A compact administrator of the sending state makes a request for placement utilizing the proper forms and the supporting case history documents. The administrator in the receiving state then makes the necessary arrangements with the public institution and follows through with cooperative arrangements for delivery of the individual to be confined. The receiving state is obligated to provide a treatment environment comparable to that provided its own residents in the institutions and to provide regular reports to the sending state as to the status of the juvenile. Although the treatment decisions are to be made at the institutional level, the sending state still maintains ultimate jurisdiction over the juvenile in placement and may at any time request release or placement changes.

Finally, a delinquent juvenile may be placed into a private facility for care and treatment in another state. The Juvenile Compact Administrator's Manual advises that the child should be placed on probation or parole and sent to the other state under the compact, assuring that the private institution is not correctional in nature and is licensed by the proper state authority.[17]

It is important to note that out-of-state confinement or private institutional placement under the auspices of the Juvenile Compact and the Out-of-State Confinement Amendment are constrained by states' definitions of "juvenile delinquent." In many states, this definition is restricted to what would be criminal acts if committed by adults; in others, it will include status offenders or violators of previous court orders. It is conceivable that a sending state might seek to place a juvenile in a state for an act which, in the receiving state, would not be defined as an act of delinquency.

Courts' historical use of "courtesy supervision" in the receiving state is enhanced by the legal mechanism of the Juvenile Compact, extending the "sending state's court's jurisdictional authority into the receiving state."[18]

Also, the assurance of due process and other rights for the children involved is increased, especially in light of variations in state's juvenile codes. The possibility of achieving the goal of treatment and rehabilitation may be enhanced, as well, by the use of the Juvenile Compact, with requirements of facility licensing, placement monitoring, and continued probation or parole supervision helping to assure protection and a better level of care.

However, despite legislative passage of ratification statutes for the Interstate Compact on Juveniles in all of the 51 U.S. jurisidictions, the applicability of this compact is subject to different interpretations, due to the wording of two of its articles. Article II states that this compact is "not in substitution for other rights, remedies and procedures." The Juvenile Compact is specifically explained in the administrator's manual as optional, stating Article II reserves to the states "the right to use informal arrangements for return and supervision of juveniles."[19] Furthermore, Article XV declares that the compact provisions are severable if they are "declared to be contrary to . . . the applicability thereof to any government, agency, person or circumstance." For example, since the Uniform Juvenile Court Act, adopted by some states, permits juvenile courts to make out-of-state placements, local courts might hold the state's compact provisions to be inapplicable. There is, therefore, an option left open to states to allow local courts to make their own placement arrangements, which would not have the protections offered juveniles through the compact.

These two factors have left the issue of compliance and enforcement unanswered in many states. Compact administrators are sometimes uncertain of their ability to assure compact utilization for the return or supervision of its youthful state residents under its purview. This is particularly a problem for administrators in states where community juvenile justice services (courts or court services units) are operated by local government with administrative if not fiscal autonomy from the state agency. It appears that this autonomy and the question of the legal requirement for compact use would help to explain the fact that state juvenile justice agencies reporting compact information in the Academy's national survey utilized interstate compacts to a far greater extent than locally operated juvenile justice agencies.

Probation or parole status may be terminated by the court of jurisdiction while a juvenile is residing in the receiving state. Upon that decision, the Juvenile Compact administrators in both states are notified, as well as the supervising court in the receiving state. The juvenile may then continue to reside in the receiving state, if in a private residence, or be returned to the sending state from the facility in which the youth had been placed. Some question has arisen about the "appropriateness" of the first possibility because the juvenile may be residing with persons other than a parent, and should a crisis occur, accessibility to a legal guardian may be difficult. Also, once court jurisdiction is terminated, any payment for care from the receiving state may also cease. Currently, no Juvenile Compact procedures or rules and regulations promulgated by the Association of Juvenile Compact Administrators directly speak to these potential problems.

Administrative, bureaucratic, and legal issues which surround more than the Juvenile Compact will be discussed later in this chapter. Two very thorough essays on compact-related issues are also included in Major Issues in Juvenile Justice Information and Training: Readings in Public Policy.[20]

Interstate Compact on the Placement of Children

The Interstate Compact on the Placement of Children (Placement Compact) provides a legal and administrative means for child placement outside of the state of residence for most types of care, treatment, or protective services.

Histo[illegible]

The Placement Compact was written in the late 1950s as a complementary document to the Juvenile Compact, stemming from a desire to protect children not on probation or parole who are placed out of their state of residence. Again, the reasoning offered is that, although the U.S. Constitution requires that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state," this does not require each state to enforce the laws of the other state.[21] A state's authority, even with the existence of importation and exportation laws, was recognized as jurisdictionally limited to its own borders, not overcome by the full faith and credit clause. Attempts to regulate interstate placement by unilateral statute did not include adequate means for determining compliance, and authorization for bonding was often ignored or waived and could only redeem the financial aspects of placement obligations.[22] The appearance of the Placement Compact in 1960 began a progressive move towards full interstate cooperation in the regulation and monitoring of the placement of children across state lines. In comparison to the Juvenile Compact, the initial state adoption rate of the Placement Compact was quite slow. This difference has been assessed by two compact authorities in the following ways.

> For the most part, the spread of the compact was not impeded by any negativism about either the principles involved or their actual implementation. Rather, an absence of knowledge concerning the compact and the absence of sufficient means to assist States in learning of it and of studying its technical aspects were the inhibiting factors.
>
> But in 1972 a grant was obtained by the American Public Welfare Association from the Department of Health, Education, and Welfare (HEW) specifically to increase services for the compact. Work under the grant began in

> earnest in October 1972. It consists of a higher level of secretariat services than was previously available; presentation of information on a systematic basis concerning the compact; and technical assistance to States studying the effect which adoption of the compact would have for them.[23]

By the end of 1980, 47 states had enacted the Placement Compact, leaving the District of Columbia, Hawaii, Michigan, Nevada, and New Jersey as the five nonmembers. Five states passed the required legislation for compact membership during or after the 1978 reporting year of the Academy's national survey.

Purposes

The first Article of the Placement Compact gives the primary purposes of this compact, based on a general effort to assure that each child to be placed receives the fullest opportunity to be sent to a setting which would provide "a necessary and desirable degree and type of care," and includes:

1. Provisions for authorities in the receiving state to review the placement circumstances and proposed setting, in order to help assure all protective requirements are met.

2. Means for authorities in the sending state to assure the quality of care to be offered in the proposed setting, before placement is made.

3. Provisions for determining legal and fiscal responsibilities and assuring the jurisdictional authority of the sending state (and agency).

The compact's main functions, derived from these purposes, are to assure an appropriate placement setting has been selected in the receiving state, to determine legal and fiscal responsibility for the child and the placement before it is implemented, and to assure required monitoring of the placement. The greatest portion of placements arranged through the Placement Compact are for adoptive and dependent children. This second status includes children who are in the custody of a public agency and are sent out of state to live with relatives as well as children who are placed with their legal parents in another state by a public agency. To a lesser extent, children are placed out of their state of residence to some types of public and private institutional settings, through the Placement Compact.

A compact secretariat for the Association of Administrators of the Interstate Compact on the Placement of Children helps member states to carry out the above functions by providing technical assistance, maintaining national compact records through the accumulation of quarterly reports from member states, circulating updated material for the administrators' manual, and procuring and distributing legal opinions on compact-related issues. This secretariat is located in the American Public Welfare Association's office in Washington, D.C. It continues to provide professional advice and testimony to parties interested in promoting their state's membership in the Placement Compact, along with its other responsibilities.

Relevant Components, Benefits, and Issues

Almost all out-of-state placements which can be arranged through the Placement Compact are relevant to the Academy's national study. Only the placements of children to the homes of a natural parent in other states do not meet the study's particular operational definition of placement. It should be recognized that this type of placement constitutes a large proportion of those processed by ICPC offices throughout the country.

There are three types of residential settings into which children may be placed which are not included within the purview of the Placement Compact: facilities which are primarily educational in nature (i.e., boarding schools), medical facilities, and institutions for the "mentally ill, mentally defective, or epileptic" (compact wording). These exceptions are discussed later. Out-of-state placements made by close relatives to the homes of close relatives are excluded from compact compliance as well. The only other limitation to the applicability of this compact, according to its Article VIII, is to placements made through another interstate compact or a reciprocal agreement "which has the force of law." Agencies or persons within the Placement Compact's signatory states must follow compact procedures even if the receiving state is not a member of that compact. The sending state's compact administrator must be notified of the intention of placement and noncompact authorities in the receiving state are contacted for preplacement investigations and the development of a formal agreement between the involved states. Some problems have been encountered by nonmember states when their own agencies attempt to place children in states which have enacted the Placement Compact. These problems occur primarily because of the receiving member state's requirement of legal compact procedures for accepting a placement. These requirements stem from the member state's legal commitment to the compact.

The Placement Compact offers the states and children involved specific legal and financial protection. When children are placed out of their state of residence, the jurisdiction and the financial responsibility of the sending state and agency is maintained if the Placement Compact is utilized. The compact clearly ascribes financial responsibility for child care and treatment in its procedures. Notification requirements including the option of preplacement investigations, allow the receiving state the opportunity to assure proper care, determine financial responsibility, be aware of the children's presence in the state and, if necessary, help monitor the progress or stability of the placement. This monitoring aspect is optional in an ICPC-arranged placement, but gives the sending state and agency a representative in close proximity to the placement setting. Otherwise, monitoring may occur only through written or verbal reports or more expensive on-site visits by personnel of the sending state. Even if an agency in the receiving state is not requested to supervise (monitor) a placement, deficient or infrequent progress reports from the placement setting may be corrected more readily through the intervention of compact administrators if the placement was compact-arranged. This advantage is also important when a placement is determined to be unsatisfactory or in need of supportive services. The intervention of a state official in the same state as the facility or setting caring for a child has considerably more legal basis and authority than the authority held by an agency in another state. This is particularly true when the use of "approved" settings for compact-arranged placements usually implies certified or licensed ones.

Article VI of the Placement Compact provides for institutional care of delinquent children. The provisions of this article stand out from the others for several reasons, the first of which is the special status of children as adjudicated delinquents. Recalling the foregoing discussion of the Interstate Compact on Juveniles, the reason for the presence of this article in the Placement Compact is important. The drafting of the Placement Compact occurred after the Juvenile Compact had been enacted by several states. It had become apparent that the specific wording of the Juvenile Compact regarding institutional placements of delinquent juveniles was being read to mean only public institutions. Therefore, to assure that out-of-state placements of adjudicated delinquents to both public and private institutions were clearly subject to a compact, Article VI was included in the Placement Compact.[24] The wording of this article and the interpretive comments within the administrators' manual acknowledges the possibility of direct court placements out of state into a private institution without a mandatory preplacement decision by the compact administrator in the receiving state.[25]

An interesting note is that only the Placement Compact's administrators' manual includes comments on this "restrictive wording" of Article X regarding an institution's operation in the Juvenile Compact. As already discussed, the Juvenile Compact manual provides a suggested means for arranging the placement of an adjudicated delinquent into a private institutional (and noncorrection) setting without discussing the limited interpretation of Article X.

Article IV of the Placement Compact includes procedural requirements for a hearing in the sending state prior to the institutionalization of a delinquent juvenile. The parent, guardian, and counsel are required to be heard in the hearing prior to the out-of-state institutionalization of the youth. The judge, however, may rule that the parent has no right to disagree with the disposition because of the delinquency status of the juvenile. The major requirement for an institutional placement under the compact is that it must be in the best treatment interest of the child, as determined by the local court (or sending state agency). This right to a hearing is not required for any other out-of-state placements subject to the Placement Compact, however.

Regarding the issue of out-of-state placement applicability to the Placement Compact, it is necessary to reintroduce the discussion of placement settings excluded from the purview of this compact. The 20 years which have transpired since the final draft of the Placement Compact became available for state enactment have included many changes in the perceptions of what constitutes appropriate treatment for children with certain handicaps.

The "intent" of excluding from the compact the enrollment of children into private boarding schools, which primarily offer educational services similiar to those in public schools throughout the country, may be less relevant today because of increasing use of special residential schools for children with certain handicaps. This second category of private schools is now extensively used by parents, school districts, and other public agencies as a setting for children in need of specialized care and therapeutic or habilitative treatment. This treatment component has been interpreted to mean that the placements are not solely "educational in character" and, therefore, are argued to be under the purview of the Placement Compact. Similarly, the trend in the past 20 years towards the use of nonmedical settings for the care and treatment of mentally ill, emotionally disturbed, mentally retarded, and developmentally disabled (including epileptic or seizure-prone) children has apparently placed a large group of previously excluded "psychiatric" and "medical" settings under compact purview.[26]

Interstate Compact on Mental Health

This compact, unlike the preceding two, provides for the interstate transfer by member states of both children and adults who have been patients in public mental health or mental retardation facilities and who are sent to public inpatient or aftercare services in another state, regardless of state residence requirements and at the expense of the receiving state. It also provides for the temporary care of an individual who has "escaped" from an institution to another state and is deemed potentially dangerous.

History

Concern among mental health officials about the restrictiveness of legal residency requirements for the public psychiatric and clinical treatment of mentally ill persons led in 1955 to the cooperation of state officials of ten northeastern states in developing an interstate compact. An objective of this compact was to place a person's mental health needs before the question of legal residency.[27] This Interstate Compact on Mental Health (Mental Health Compact) was not meant to be a regulating piece of legislation but, rather, a means for more readily enabling a patient to receive public care and treatment no matter what the official state of residence. This access to public care included mentally retarded individuals as well, with the historical term "mentally defective" being utilized in the compact wording. Currently, 44 states and the District of Columbia are members of the Mental Health Compact. Virginia has revoked its earlier ratification of this compact, but continues to aid in the transfer of patients.

Purposes

The Mental Health Compact has as its basis for existence an understanding that the proper care and treatment of mentally ill or mentally retarded persons comes before the question of formal residence or citizenship. It also serves as a means for protecting the community from persons who may be dangerous or not responsible for their actions due to their mental state. Towards these ends, the primary purposes of the Mental Health Compact include:

1. Provisions for the legal institutionalization or care of the mentally ill or mentally retarded, despite lack of state residency requirements.

2. Provisions for establishing the responsibilities of the states involved with a patient.

3. Provisions for detaining an escaped patient from another state's institution who is deemed dangerous or potentially dangerous.

4. Provisions for assuring the continuance of guardianship for a patient when transferred.

The Mental Health Compact functions to carry out these purposes in a similar fashion to the other compacts, with procedures to be followed in both the sending and receiving state. In recent years, this compact has not maintained a secretariat. More general services have been rendered by the National Association of State Mental Health Program Directors, including the provision of an informal association of Mental Health Compact administrators.

Relevant Components, Benefits, and Issues

Because of the limitation of the Mental Health Compact to patient transfers between public facilities or programs, this interstate compact is the least frequently used of the three relating to the placement of children. Changes in the patients' family place of residence are presently the major reasons for the use of this compact. This usually entails interinstitutional transfer, rather than the move to an outpatient or aftercare service in another state.

Compact procedures are implemented when it is deemed necessary to transfer a young patient to another state's public facility because it is considered a more appropriate care and treatment setting. This determination often stems from a treatment philosophy valuing continual family involvement and eventual family reintegration, which can occur more readily in closer proximity to the moving family. Of course, public financial responsibility is also a consideration, and the movement of the legal guardian or parent from one state to another implies the movement of financial responsibility to the new state of residence. Provisions within the Mental Health Compact acknowledge this shift and, unlike the other relevant compacts, the receiving state becomes the financially responsible party, except for the transportation costs which, according to Article VII, are either borne by the sending state or through other financial arrangements (often the parents).

Article III of the Mental Health Compact relates the specific procedures for a patient's transfer which parallel those of the Juvenile and Placement Compacts. The patient's transfer must be preceded with a notice to the appropriate compact authorities and the receiving public setting must have the opportunity to review the patient's records. A transfer can only occur through the compact if the receiving state agrees to accept the patient. The patient is provided the same priority of admission as any state resident through the stipulations of the compact (Article III, (d)).

Utilizing the Mental Health Compact assures the family, patient, and member states that legal and financial responsibilities are understood by all parties involved. In addition, public provision of care for individuals in need is assured without punishing them for not meeting state residency or citizenship requirements.

However, due to the possible unavailability of public facilities because of the closings of large institutions and a shortage of beds, the request for a patient's transfer may be accepted by the receiving state upon the condition of availability. The young patient may be placed on a waiting list, again, subject to the same admission priorities as state residents, until public care becomes available. Therefore, children may remain in a sending state facility for many months or even years after the family has moved to the receiving state, if arrangements for private care are not substituted by the family. It has also been noted during the Academy's national study that in some instances, unless the family seeks to transfer the child, especially a severly handicapped patient, a receiving state's facility will question the appropriateness of the transfer. In such circumstances, the argument is put forth that no interest in visitation or reunion has been displayed and a move to an unfamiliar setting would therefore not be in the best interests of the child. Also, shared responsibility for placement costs by the family may be avoided by leaving the child in a state the family no longer resides in (therefore, making collection difficult or completely avoiding charges which would occur in the potential receiving state). Efforts by the authorities of a sending state to transfer a young patient without parental initiative or consent are, therefore, difficult to bring to fruition.

Finally, nonmember states of the Mental Health Compact may have reciprocal agreements with party states about transfers, and Article VII of the compact acknowledges their validity, stating that the compact is not meant to void such agreements or other forms of statutory authority.

AN OVERVIEW OF COMPACT ADMINISTRATION AND UTILIZATION ISSUES

Certain unique aspects of each of the three interstate compacts have given rise to issues which are specifically related to a single compact. These issues have been discussed in the context of the compact to which they relate. However, there are also administration and utilization issues which include more than one of these three compacts.

The issues raised here are not experienced by all compact administrators or all placers of children. Some states or separate compact offices have resolved certain issues through actions seen as appropriate for their particular jurisdiction. Some of these attempts were discussed during the Academy's on-site visits to seven case study states. The reader is encouraged to review these findings in Chapter 5 or Appendix K (in second volume). Also, it should be reiterated that three prominent authorities have contributed suggestions regarding compact administration and utilization in essays included in Major Issues in Juvenile Justice Information and Training: Readings in Public Policy.

Administrative Issues

Several important factors pertaining to these issues are related to the location, operation, and resources of the compact administration offices themselves. The location of an interstate compact office within the bureaucratic structure of state government may affect its ability to carry out its functions effectively. Determining the organizational location of a compact office is left to the discretion of each state's authorities once a compact is ratified. The possibilities available are numerous and existing locations are diverse. Not only may each of the three relevant compacts be located in different agencies, but it is possible to find a single compact's administration divided into separate offices focusing on specific functions of that compact. For instance, the Juvenile Compact is administered in New York and New Jersey through two state agencies, with out-of-state probation supervision and parole supervision arranged by separate juvenile justice offices. California has elected to administer the Placement Compact through its foster care office and also through its adoption division. Mental health and mental retardation agencies within state government may arrange patient transfers through separate offices for the administration of the Mental Health Compact, as in the case of South Carolina. There are, of course, advantages in this practice, including familiarity with specialized areas of service, direct personnel contact, and the potential of reduced work load. However, it can also be argued that this form of separation and specialization may cause unnecessary overlap and the continued omission of certain unusual placements which slip between the designated areas of administration.

The practice of assigning a single state office the responsibility of administering more than one interstate compact has also been implemented in several states. Iowa, for instance, manages the Juvenile and Placement Compacts within its social service agency responsible for both juvenile justice and child welfare services. The umbrella human services agency in Florida includes the three compacts' deputy administrators in the same office, while Connecticut has designated the same person as deputy administrator for all three compacts, housed within the specialized agency for services to children. This type of administrative organization may help to simplify channels of authority and communication, but may also be seen as reducing the single office's ability to detect compact noncompliance in the greater area of jurisdiction.

The physical location of an interstate compact office may influence its ability to administer the functions of the particular compact. The presence of the Mental Health Compact office within a state-operated facility, as in New Mexico, may give this compact high visibility to individuals directly involved in the transfer of patients. In contrast, until recently, the administration of all three compacts in Connecticut occurred in an office almost 20 miles from the state capital and the central office of state-operated services for children. Low visibility may effect the level of compact awareness that agency personnel maintain.

Compact offices sometimes have a marginal relationship to other department functions. This "distance" may be present despite the office's physical proximity to the direct services or administrative divisions. Often the individuals responsible for compact implementation and enforcement are not involved in agency policy development, planning, or the drafting of rules and regulations which influence compact compliance factors.

The level of resources made available to a compact office often reflects its position in state government and affects its operational success. The perception of some compact offices being on the fringe of a state agency may be corroborated by the level of resources made available to it. First, it should be understood that in many cases the appointed compact administrator holds the position in name only, with everyday operations being handled by a deputy administrator or a compact correspondent. This latter title, and sometimes the former, is normally given to a secretarial position with a commensurate pay scale. The bulk of the compact-related work is handled by such a person, often without the help of other professional or clerical staff.

Under these conditions the turnover of personnel in this compact position is extremely high, according to compact secretarial records. On-the-job training of a replacement often entails only a briefing from the predecessor and the handing over of the compact manual. For the sake of discussion, the term compact administrator is used here to refer to all persons involved in the direct administration of a compact.

Compact office record-keeping may also suffer from a lack of financial and personnel support. The unavailability of aggregated compact utilization information during the Academy's national study was often attributed to the lack of sufficient staff and to the lack of a readily accessible information system. This second factor may, in part, be due to the first. At the extreme, ongoing compact records were only recently begun to be kept by the Juvenile Compact office in Mississippi.

Very few compact offices have their records linked with other departmental information systems and even fewer have access to a mechanized system. Several problems may arise from inadequate information system. For instance, the approval of a compact placement request may not necessarily result in the implementation of the placement. Without a link between the general agency case records and the compact office files, the continued presence of the child in the state of residence would not be known to the proposed receiving state. A reverse situation may also occur when a compact-processed out-of-state placement fails and the child returns to the sending state without notification of the compact offices involved. Finally, the child placed out of state may reach the age of majority while in a home setting placement and termination of the placing agency's responsibility for the child is not recorded in either compact office, leaving the case inaccurately "active."

In an attempt to curtail these problems, compact offices have developed various means for keeping accurate records. For instance, recently the planning of a departmental automated management information system in Connecticut included the compact deputy administrator's input on what data was required for that office's functions. Also, some compact offices such as those administering the Placement Compact in Montana and Virginia, have developed an information system which is not computerized but still provides updated information about compact use. Virginia has maintained close scrutiny of financial records, for instance. It should also be pointed out that the quarterly report requests from the Placement Compact secretariat have oriented its compact offices to keep updated status records, despite any of the above-mentioned shortages.

A lack of resources may also leave the compact administrator without sufficient time or finances to carry out responsibilities beyond placement processing. The ability of a compact administrator to help caseworkers and other parties to become familiar with the benefits and procedures of compact use could ultimately affect levels of utilization. Similarly, increased resources are needed to monitor the appropriate agencies for compact compliance. Some compact offices are only able to handle the work which is readily submitted and cannot assess if many more placements are occurring without compact use.

Accessibility to formal legal support is important to a compact office's functioning. This resource is also often dependent on the importance given to this office by state authorities. Help from the legal services branch of government may be limited, either due to government priorities or the level of familiarity of personnel with the complexities of interstate law. Legal opinions within the context of state laws on compact applicability, besides those offered by compact secretariats, are a means of bringing greater compliance to compact procedures. Another consequence of sufficient legal support can be seen in Virginia, whose Placement Compact office has gained national recognition for its effectiveness. To a great extent, Virginia's success has been due to the legislative support and resultant financial and legal resources it has received in the past four years. (See Appendix J for a fuller discussion of Virginia's administration of this compact.)

Another administrative problem experienced by compact personnel is one which is more generally shared by state agencies. The presence of locally operated agency counterparts, with a long history of autonomy in both policy and financial matters, has, for some compact offices, culminated in jurisdictional disputes. The ratification of interstate compact legislation by the state is sometimes perceived as another attempt by state authorities to gain control over local agency practices. Even when state and local agency relations are not affected by such a perception, the ability of a state agency to supervise the placement activity of its local counterparts may still be hindered by weak channels of communication, the financial independence of the local agencies and, as mentioned earlier, the lack of compact office resources to provide knowledge and training about compact use to local agency personnel. How and when an interstate compact is utilized by a placing agency or independent party is greatly dependent on the knowledge held about the compacts to which the state is a member, the benefits they provide, and the procedures they entail.

Problems with the applicability or coverage of compacts are probably the greatest barrier to compliance for the compact administrator. This is followed by the lack of negative sanctions and the avoidance of potential time delays and paperwork in the procedural steps previously described in this chapter. Before discussing these utilization issues, a tabular review of the three compacts' applicability in relation to senders and receivers is offered in Table 2. During the Academy's national study, disagreements about compact applicability to certain types of placements were reported by state and local officials. It also became apparent during the period of study that public confusion exists about compacts' purview. The question of what compact covers what kind of placement or what type of child does not have a simple answer, as can be seen in the multiple possibilities illustrated in Table 2. The areas of applicability which are currently in question, at least in some states, are noted. Their compact coverage is supported by the secretariats' opinions provided to all compact administrators in their procedure manuals. The Placement Compact manual, as of December 1980, offered over 40 secretariat opinions, many regarding the applicability of that compact to children's placements. These placements included unusual circumstances or simply were in question because of the issues discussed in this chapter regarding the Placement Compact.

TABLE 2. APPLICABILITY OF THREE INTERSTATE COMPACTS, BY TYPES OF SENDERS AND RECEIVERS

Types of Senders and Receivers	Placement Compact	Juvenile[a] Compact	Mental Health Compact
SENDERS			
State public agency	Yes	Yes	Yes
Local public agency	Yes	Yes	Yes
Private agency	Yes	No	No
Private individuals (parent, guardian, close relative)	Yes[c]	No	No
RECEIVERS			
Parent's or relative's home	Yes[c]	Yes	No[d]
Foster family home	Yes	Yes	No
Adoptive home	Yes	Yes	No
Child care institution[b]	Yes	Yes	No
Public corrections institution	No	Yes	No
Special (education) school	No[e]	Yes	No
Public mental health or retardation facility	No	Yes	Yes
Private mental health or retardation facility	No[e]	Yes	No
Medical facility (hospital, clinic)	No	Yes	No
Boarding school	No	Yes	No

a. The Juvenile Compact, regarding out-of-state placements or transfers, only applies to delinquent youth provided probation or parole supervision.

b. Child care institutions include residential treatment centers, group homes, and other types of facilities which provide foster care in addition to other services. Article VI of the Placement Compact provides a procedure for the placement of delinquent youth into both public and private facilities.

c. The exception to this coverage, as stated in Article VIII, is the placement of a child by a close relative or nonagency guardian with an out-of-state close relative or nonagency guardian.

d. May be enacted when the patient is transferred for outpatient or aftercare and will live with parents or relatives.

e. If the care and supervision of the child is habilitative or treatment orientated, provided in a foster care-like setting, and is not solely for education or medical purposes, that placement may be considered applicable to the Placement Compact, according to the secretariat's opinion.

A review of Table 2 shows that nearly all types of out-of-state placements are subject to one of the three compacts discussed. It should be noted that placements to private mental health or retardation facilities, medical facilities, and boarding schools are only designated to be subject to a compact if the youth are adjudicated delinquent and placed with probation or parole supervision by receiving state agency or court. Discussion of each of the compact's applicability was previously given in the overview of compact administration and utilization issues, while broader issues of compact coverage follow.

Utilization Issues

As previously described, each of the three compacts was written to meet certain needs of specialized areas of service: juvenile justice, child welfare, and mental health and mental retardation. Compacts are often perceived to serve only single functional areas of government. Upon a state's ratification of a compact, the selection of a formal compact administrator and the location of the compact office were often influenced by this "service area" perception. However, the service needs of children often transcend departmental or agency lines. For instance, it is not uncommon to find a juvenile justice agency providing help to an emotionally disturbed youth who has committed a delinquent act, or a social service agency supervising a status offender on probation. Yet, when a placement decision is made by either of these agencies, the compact housed within its own functional category may be the only compact studied for its applicability to an out-of-state placement. An awareness of other interstate compacts may be lacking, or a perception often voiced during the Academy's study may exist: "That's not our compact." This was particularly noted by juvenile justice agencies in reference to the Placement Compact when placing youth in private child care facilities. Similarly, in the case of some education agencies, a perception may pervade that "we have no compact," there being no compact office located in the state education agency.

Certain exclusions in the interstate compacts have caused problems of interpretation. School districts' perception of not having a compact is one among several which have arisen because of these exclusions. Article II of the Placement Compact exclude coverage of several types of residential settings and is the principle example of this interpretation problem. Institutions for the mentally ill, mentally retarded, seizure prone, those "primarily educational in character," and medical facilities are exempted from this compact's purview. However, special education services have developed in the past few decades and residential schools with specialized programs for handicapped and disabled children's care, training, and treatment have become more and more prevalent. Accordingly, the distinction between the exempted types of facilities and the included child care or treatment facilities has become difficult to make. Often these specialized "schools" are licensed as child care facilities with their large educational component also being certified by the state.

A problem arises, then, when local school districts, parents, or other service agencies decide to place children in such "schools." Often, due to the previously mentioned functional service orientation towards a compact, school districts are not aware of the existence of the Placement Compact and its legal requirements or, as already pointed out, the selected settings are perceived to be excluded by Article II. Many residential programs for even the severly mentally retarded are no longer merely long-term care institutions, but now include training and education components which may be seen as placing them outside of the excluded categories. Additionally, the medical or hospital classification given to psychiatric facilities has given way to a treatment facility orientation.

Enforcement of compact compliance in such cases has become more and more of an issue for compact administrators, resulting in requests for secretariats' opinions and state government action. Recently, the state education agency and the Placement Compact office in Virginia have begun to work together in assuring compliance among local education agencies, following legal discussions of this compact's applicability to out-of-state placements by education agencies. Texas has used its child care licensing requirements to assure that placements made to licensed facilities within its border are arranged through a compact. Nationally, however, Placement Compact administrators find themselves in the position of processing placements made by child welfare agencies to a particular facility, while being aware of other placements to that same setting made by school districts, parents, or mental health centers without compact utilization. These placing parties argue compact use is not necessary because of the excluded status of the "school" or "private psychiatric facility."

While this applicability issue is starting to be resolved in most states, the lack of effective negative sanctions available to compact administrators for noncompliance is an ongoing problem. Of course, legal action is possible. This option is apparently seldom used because of the lack of legal counsel for the compact office, hesitation on the part of agency authorities to use such drastic means on "one of their own," or the anticipated length of time involved in preparation, court proceedings, and appeals when a child's immediate well-being is in jeopardy. More often, attempts are made to bring the placement into compact compliance, if it is deemed acceptable. Some states, Alaska and Ohio for instance, have small fines which may be charged when noncompliance is identified, but these require legal action as well. Revocation of an agency's license or permit which allows it to place or care for children is specifically mentioned in the Placement Compact, Article IV, but again, this sanction against a public agency, expecially the same agency which houses the compact office, is seldom used. Administrative reprimands have been utilized by compact administrators, with noncompliance by an individual public agency or a caseworker being made known to a higher level of authority.

Finally, along with the other arguments made by placing agencies about their reasons for not utilizing interstate compacts, is the desire to avoid perceived time delays and the red tape of paperwork. The involvement of several public authorities in compact procedures, along with those at the placement setting, increases the possibility of delays, especially if the resource shortages mentioned affect the operations of one of the compact offices. The requirements within all the compacts to assess placement appropriateness forces the placing agency to develop a complete case history and placement justification, which often entails a preplacement investigation of the setting and again involves several individuals in the process. The actual forms to be completed for compact use are few in number, but require both the sending and receiving compact administrators' signatures after the required tasks are completed. The sending agency personnel, being closer to the child with service needs, may view these delays as not in the best interests of the child waiting for placement. However, the legal safeguards for the child provided by the use of an interstate compact are seen by compact personnel and others to override any inconveniences experienced in compliance procedures.

FOOTNOTES

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1. Portions of this chapter originally appeared in The Council of State Governments, The Interstate Placement of Children: A Preliminary Report, (Lexington, Ky.: 1978).

2. See The Council of State Governments, Interstate Compacts and Agencies (1979 Edition) (Lexington, Ky.: 1979) for fuller coverage of these areas of interstate cooperation.

3. The verbatim texts of all three compacts and a listing of current membership in each of them appear in Appendixes A,B, and C.

4. Sharon L. Morris, "The Interstate Compacts: Utilization for the Transfer, Placement or Return of Children Across State Lines," prepared for the National Council of Juvenile and Family Court Judges, January 1980, p. 4.

5. See U.S. Constitution, Article I, Section 10: "No State shall, without the Consent of Congress enter into any Agreement or Compact with another State, or with a foreign Power."

6. Virginia v. Tennessee, 145 U.S. 503 (1893).

7. State ex rel. Dyer v. Sims, 341 U.S. 22 (1955).

8. Virginia v. West Virginia, 246 U.S. 565 (1918).

9. Frederick L. Zimmermann and Mitchell Wendell, The Interstate Compact Since 1925, and The Law and Use of Interstate Compacts, (Lexington, Ky.: The Council of State Governments, 1950 and 1976, respectively).

10. Marian E. Ridgeway, Interstate Compacts, (Carbondale, Ill.: Southern Illinois University Press, 1971).

11. Kurt H. Weiland and Joseph L. White, "The Law of Interstate Placement of Children," Ohio State Law Journal, vol. 39, no. 2 (1978), pp. 327-46.

12. Crime Control Consent Act of 1934, Title 4, U.S.C. Sec. 112.

13. For a discussion surrounding S.R. 130, 85th Congress, First Session, 1957, see The Council of State Governments, The Handbook on Interstate Crime Control, (Lexington, Ky.: 1966), p. 53.

14. See full compact text in Appendix A.

15. The Council of State Governments, The Handbook on Interstate Crime Control (1978 Edition) (Lexington, Ky.: 1978), p. 45.

16. The Council of State Governments: The Interstate Placement of Children: A Preliminary Report, Chapter 4.

17. The Council of State Governments, Juvenile Compact Procedure Manual (Lexington, Ky.: 1976), Section 601.2, p. 34.

18. Morris, "The Interstate Compacts."

19. The Council of State Governments, Juvenile Compact Procedure Manual, Section 203, pp. 16-17.

20. See, Bruce Gross and Mitchell Wendell, "Interstate Services for Children and Interstate Compacts: An Analysis of Approaches for Effecting Change," and Jane C. McMonigle "Strengthening the Compacts: Administrative and Bureaucratic Approaches," in Major Issues in Juvenile Justice Information and Training: Readings in Public Policy (Columbus, Ohio: Academy for Contemporary Problems, 1981).

21. See, generally, Brendan Callanan and Mitchell Wendell, "The Interstate Compact on the Placement of Children," Juvenile Justice, vol. 26, no. 2, (May 1975), pp. 41-46.

22. American Public Welfare Association, The Interstate Compact on the Placement of Children: Compact Administrators' Manual, (Washington, D.C.: rev. July 31, 1980), p. 1.01.

23. Frederick L. Zimmermann and Mitchell Wendell, "Interstate Compacts," in The Council of State Governments, The Book of the States: 1974-75, (Lexington, Ky.: 1974), pp. 267-70.

24. The confusion stems from Article X of the Juvenile Compact where it reads "Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement," and also "(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile." (Emphasis added.)

25. American Public Welfare Association, The Interstate Compact on the Placement of Children, p. 2.14.

26. Gross and Mitchell, "Interstate Services for Children," Major Issues in Juvenile Justice, pp. 132-33.

27. The Interstate Compact on Mental Health: What It Is and Does (Chicago, Ill.: Interstate Clearinghouse on Mental Health, Council of State Governments, 1968); and Wilfred Bloomberg and Myron John Rockmore, "The Interstate Compact on Mental Health," American Journal of Psychiatry, vol. 124, no. 4 (October 1967), pp. 520-26.

CHAPTER 5

CASE STUDY SUMMARIES AND OVERVIEW

INTRODUCTION

This chapter provides a comprehensive overview of the out-of-state placement policies and practices in seven states. Full and detailed case study notes are included in Appendix K for each state. The reader is encouraged to refer to these notes for more specific information, such as relevant statutory and case law citations and points of policy and practice too detailed for inclusion here. Every effort has been made to distill the most important aspects of each state's system into a concise and pointed summary.

These case studies constitute the qualitative research effort of the study described in Chapter 1. Comparable information was collected in semi-structured interviews with both state and local officials in the seven states. Similar data were collected among states' child welfare, education, juvenile justice, mental health, and mental retardation systems. This approach was adopted to promote discussion of important issues in reference to specific agencies and to allow different agencies and states to be compared and contrasted. The nature of the information that emerges from these studies is quite different from the national survey findings. The survey primarily addresses the outcomes of out-of-state placement systems, such as incidence of placement, children's destinations, and compact use. The case studies, on the other hand, go inside of these placement systems to further investigate their policies, processes, and administrative problems. In this way, the two approaches complement one another, with the case studies expanding upon and explaining some of the trends which were discovered in the national survey.

The case studies collected information on states' out-of-state placement policies and practices, and particular problems and successes in policy implementation are noted. Major issues in each state are also identified and discussed. Finally, respondents' recommendations for change are offered. Factors justifying case study and a brief organizational description of relevant public agencies are also offered to familiarize the reader with the research setting in each state.

Personal interviews were conducted with over 230 concerned and authoritative respondents in 33 towns and cities throughout seven states. The states were Alaska, California, Louisiana, Michigan, New Jersey, New York, and Virginia. These respondents provided facts and informed opinions about the status, propriety, and need for change in placing children into other states. While the summary of their contributions which follows is by no means entirely representative of the nation, important trends, relationships, and recommendations appear from which all state and local agencies can profit. Contributors are people who institute public policy, who carry out policy prescriptions, and who are subject to their effects. They include regulatory and service adminstrators at the state and local levels, budget officials, planners and researchers, legislators and their staff, and persons involved in important litigation. In addition, information was sought from relevant citizen or governmental committees, news reporters, child advocates, and private service provider associations. These participants represent the policy system which surrounds out-of-home care in general, and out-of-state placement in particular. They provided a cross section of the perspectives of child care decisionmakers, providers, and influencers.

The seven states were selected according to several criteria. These included the organization and type of regulation by level of government, geographic locale, history of involvement in out-of-state placement, and especially the presence of noteworthy or unusual activities and initiatives by the three branches of government related to out-of-state placement. The states offer differences in tradition, political and social history, and out-of-state placement policy and practices. They represent compact members and nonmembers, consolidated and independent organizational structures for youth services, local services under the auspices of state and county governments, and geographical diversity. In addition, some of these states have experienced litigation concerning the out-of-state placement of children, as well as extensive media attention, executive intervention, and legislative involvement in the issue.

Officials in five types of youth service agencies were, where appropriate, contacted in each location visited. These included key staff in child welfare, education, juvenile justice, mental health, and mental retardation agencies. Interviews with these persons formed the core of the study's knowledge about out-of-state placement policies and practices.

Sites visited in each state were also systematically selected. Interviews were held in the state capital and the most populous county of each state. Additional interviews were held in a smaller county and a medium-size county which was sometimes selected because it bordered another state.

MAJOR FINDINGS

Alaska

Reasons for Selection

This remote and relatively young state has a history of placing fairly large numbers of children out of state and, in some ways, the distance involved in such placements is more of an issue for children placed out of Alaska than from other states. There are no states contiguous to Alaska which could receive children for care and treatment at lesser distances from home. In addition, some states receiving Alaska children indicated that Alaska officials have frequently placed children out of state because care and treatment is much less expensive in the lower 48 states than in Alaska. A very large investment would no doubt be required for Alaska to develop extensive in-state services. Alaska has the highest cost of living in the country.

Also of interest was the fact that the Bureau of Indian Affairs (BIA) is withdrawing from the provision of direct services to Native American and Alaskans. The BIA has a long history of placing Native American and Alaskan children across state lines. Finally, Alaska's child care system was suspected to be in the early stages of development compared to other states, and this was viewed as an opportunity to observe the behavior of a fairly young system providing care and treatment to children.

The Organization of Services

Responsibility for supervising and administering youth services in Alaska is primarily located within the consolidated Department of Health and Social Services (DHSS). The DHSS' Division of Social Services (DSS) supervises and administers child welfare services through branch offices, as does the DHSS' Division of Corrections (DOC) for juvenile probation. Alaska's superior courts exercise juvenile jurisdiction. The DOC also operates juvenile corrections and aftercare services. Institutional care for emotionally disturbed and developmentally disabled youth are operated by the DHSS' Division of Mental Health and Developmental Disabilities (DMHDD). The DMHDD also supervises locally administered mental health centers.

Out-of-State Placement Policy

Out-of-state placements by the DSS are to occur after the exhaustion of in-state resources, if the proposed placement to another state is in a residential treatment or child care facility. The facilities must be licensed, inspected by Alaska DSS officials, and approved to receive Alaska children. In addition, the director of the DSS must personally approve all out-of-state placements to facilities or institutions. Quarterly progress reports are to be received from facilities caring for Alaska children. Additionally, all out-of-state placement referrals must be accompanied by a detailed description of rationale and long-term case plan prescribing goals and responsibilities in out-of-state care and upon return to Alaska, if applicable. Finally, all out-of-state placements involving the DSS are required to be arranged through the Interstate Compact on the Placement of Children (ICPC).

Children referred for out-of-state placement through the DOC for a residential treatment program must be evaluated by a regional screening committee and approved by the agency's administration. Exhaustion of in-state resources is required, along with justification for out-of-state placement referral. Out-of-state placement to relatives' homes or with foster families must be processed by the Interstate Compact on Juveniles (ICJ).

Placements out of Alaska by local education agencies must be approved by the State Department of Education (DOE) to receive state funding and must go to facilities that are approved by that agency subsequent to identification by the local education agency. Exceptionality must be documented, and preference must be given to placement in Alaska, either in the public or private sector. These requirements are linked to DOE funding and do not prohibit local agencies from placing children out of state to unapproved facilities at their own expense. Parental approval, where appropriate, must be obtained to place children out of Alaska.

Neither the DMHDD nor the local mental health agencies have custody of children or administer child placement funds. Placement of children needing psychiatric or developmental services is the responsibility of the DSS and DOC, depending on children's legal statuses. The DMHDD does, however, administer the Interstate Compact on Mental Health (ICMH) for the transfer of children to and from the state's public mental health and mental retardation institutions.

Out-of-State Placement Practices

Generally, there was found a fairly close correspondence between policy and practice in the DSS out-of-state placement system. In addition, there was a strong bias expressed by all DSS officials against placing youth out of state. Out-of-state placements to child care facilities are the last alternative to be considered by child welfare workers, and only five out-of-state programs were approved by the DSS to receive Alaska children in 1978. Placement to out-of-state facilities is highly controlled and the state agency director's personal approval of these placements strongly contributes to this control. Although some child welfare workers have complained about the rigorous documentation and forethought required for out-of-state placement referrals, officials noted that this has greately improved case planning. It was mentioned that the incidence of precipitous and ill-planned out-of-state placements of the past have decreased from unacceptable levels as a result of better case planning. Extensive use of Alaska's system of private providers also decreases the likelihood of out-of-state placements.

The ICPC enjoys fairly consistent utilization by child welfare workers and courts. Exceptional cases have occurred in the past, when child welfare workers placed youth out of Alaska without compact involvement, as they did with court-ordered placements, but it was reported that these have been retroactively processed by the compact. Efforts toward enforcement of the compact are primarily educational and cooperative in nature, and its administration was praised for its timeliness in processing placement referrals by some child welfare respondents. The ICPC is not interpreted by Alaska officials to apply to the placement of delinquents or other youth by the DOC. The ICPC is interpreted to be a DSS compact. Knowledge of compact policy was said to be lacking in private placing and receiving agencies, and this was the focus of efforts to improve compliance at the time of the study.

As in the child welfare system, respondents in the education system expressed a strong bias against placing children out of Alaska. Practices also appeared to be fairly consistent with placement policies. Clear documentation of exceptionality is received from local education agencies before out-of-state placements are approved. A facility is approved by the state agency by mail and correspondence from a list of settings locally nominated to receive particular children. Local education agencies can and have, on occasion, proceeded to place children out of state to unapproved facilities. This precludes the state agency from financing the placement, but for some wealthy school districts this is not a particularly strong disincentive. In general, though, it was reported that local education agencies rarely place youth in unapproved settings.

It was the perception of one official in the DOE that school districts do not adequately exhaust local and in-state resources before recommending out-of-state placements. Liberal funding policies on the part of the state agency were said to have possibly been the cause of some youth being unnecessarily placed great distances from home. In effect, there was a perception that local education agencies may sometimes take advantage of the liberal funding situation and place a child out of state who might be equally or better served near home.

The DOC agency has had a history of increasing reliance upon out-of-state institutions for treatment of juveniles. This option was demonstrably less expensive than investing in the development of in-state programs, which are very expensive to operate in Alaska. Over the years, the number of juveniles in treatment in other states grew, and the legislature responded to this trend by severely cutting the agency's fiscal 1979 budget. This caused a significant shift in juvenile treatment placement practices. Youth were returned from out-of-state facilities, and restrictions were placed by regional administrators on spending for institutional care. Placements were no longer made to Alaska Children's Services, a large in-state private provider organization, because of perceived prohibitive expenses. It is interesting to note that the DSS very rapidly filled those vacancies in Alaska Children's Services programs that resulted from the DOC withdrawal. Despite the budget cuts, the DOC was able to mobilize resources from the reduction of out-of-state placement expenditures, from capping institutional care expenditures at the regional level, and especially from the complete halt of placements to Alaska Children's Services. Funds realized from these measures were shifted to shore up the DOC's financially threatened juvenile treatment facility and to begin development of in-state specialized foster care settings for the treatment of less troubled juveniles. Specialized placement settings for emotionally disturbed and retarded delinquents were said to remain in very short supply.

Emotionally disturbed and retarded youth were, and remain, the type of child most frequently placed out of Alaska by the the juvenile justice agency. Residential treatment is also very sparse for delinquent girls, and they too are placed out of state, somewhat as a matter of course.

Regional committees screen youth who are candidates for institutional care and refer them to central office for placement approval. In referring youth for out-of-state placement, exhaustion of in-state resources, failure in previous treatment settings, and clear justification of the appropriateness of such a measure must be documented. Approval of out-of-state placements, however, was reported to be more a function of the availability of space in Alaska's own treatment program rather than being consistently determined on appropriateness of care. The pressure to keep youth in Alaska was said, in some cases, to cause inappropriate placements to the Alaska public facility rather than to more specialized programs out of state. Because of the competition for admission to the state facility, juveniles were said to spend long periods of time waiting in local detention. Some are sent to Colorado Youth Authority for treatment which is DOC's policy in times of overflow in its own treatment facility.

Youth placed in out-of-state treatment facilities are visited semiannually, and local workers attempt to maintain monthly contact with them, with some success. All of these placements are reviewed annually to bring as many juveniles as possible to least restrictive and most proximital care. Juveniles placed into facilities out of Alaska are not processed through any compact. Those placed with relatives, however, are usually processed through the ICJ. This type of placement, which does not draw on state DOC juvenile treatment funds, has continued unaffected by regulatory tightening which is tied to cost reduction. Placements with relatives are neither systematically screened by the review committee prior to placement, nor are they subject to central approval. Utilization of the ICJ for placements with relatives was said to be enforced through cooperative efforts, and was described to be a desirable but not a necessary step in the out-of-state placement process.

Neither the DMHDD nor the local mental health agencies place children out of Alaska. The DSS and DOC administer the custody of children committed to the Department of Health and Social Services, as well as all funds available for placement. The DMHDD does assist parents and, at times, other public agencies in the arrangement of out-of-state placements. However, this involvement is for the most part informal and does not draw upon the agency's funds. Children going to and from the state's psychiatric facility in relation to similar institutions in other states are processed through the ICMH. The frequency of such transfers was reported to be extremely rare. Compact officials also conduct home evaluation for emotionally disturbed youth being placed into relatives' homes in Alaska as a courtesy to other states.

In significant ways, the level of development of DMHDD child placement and treatment resources bear upon practices of other public agencies in Alaska. Emotionally disturbed and mentally handicapped youth are the type of children most frequently placed out of state by the DSS and DOC. Public resources under the auspices of DMHDD which might address the special needs of these children are seen lacking, causing the other agencies to turn to specialized programs outside of Alaska for appropriate placement settings for such difficult cases. At present, residential and in-home services for emotionally disturbed youth are under development by DMHDD. It should be noted that resources for retarded youth, both institutional and community-based, seem much better developed than those for the emotionally disturbed. Long waiting lists for residential care occur at times, but there are generally fewer problems for these children in waiting at home for an opening because their behavior is more manageable than that of severely emotionally disturbed, acting-out youth. At the local level, mental health agencies do not uniformly provide child and adolescent mental health services. The local system was described to only be approaching the provision of basic or core mental health services, much less those which are more specialized. Community-based mental health services to older adolescents were noted to be particularly absent.

The Bureau of Indian Affairs has all but withdrawn from providing direct services to Native American youth in Alaska and Native Alaskan youth, relinquishing this responsibility to the state child welfare agency. Concurrently, the DSS assumed responsibility for the implementation of the Indian Child Welfare Act, and its special provision for Native child protection and care. Tribal councils exercise considerable influence over custody, placement, and case management affairs of Native American and Alaska children. At times, this has been the source of special problems for the child welfare agency. It must abide by special procedures for children's placement, and balancing generally implemented policies and procedures for child protection with the ethos of self-determination and autonomy prescribed by the federal act. At the time of the study, only a tenuous balance had been struck between these two conflicting forces.

Recommendations and Conclusions

Alaska's relatively young child care system is struggling to appropriately address the needs of children within the state. Since the withdrawal of the federal government from this role upon statehood, and the later movement to reduce out-of-state placements, the development of in-state resources has taken on new resolve. Although many officials expressed a desire to reduce placements into other states, the realization of this goal was finally linked to cost containment moves by the legislature. The reduction of this practice, and increased regulation was economically motivated, as witnessed by the unfettered continuation of placements to settings which do not draw upon state funds. Interagency coordination of placement and service provision needs considerable development, and the expected combination of all child welfare and juvenile justice services is seen as a step in the right direction. This may also reduce the prevailing agencywide distinction between the ICJ and the ICPC which has obviated the placement of delinquents in residential treatment facilities or institutions through a compact.

More prevalent recommendations called for an increase in the scope and pace of in-state resource development, especially in specialized community-based foster care and group treatment facilities. It was said that these services need to be targeted toward the emotionally disturbed and handicapped, which were identified as the most underserved group in Alaska. In addition, it was recommended that some out-of-state placements should be permitted for very specialized services in order to prevent the inappropriate placement of children for the sake of keeping them in Alaska.

California

Reasons for Selection

This, the most populous state in the country, experienced radical tax reform with the passage of Proposition 13. The effect on services for children of a 50 percent property tax cut was of interest to the study, as were the strategies used by public agencies to maintain essential services. Also of interest in California was intensive activity by state agencies recently undertaken to upgrade in-state care, and the effects of these efforts on out-of-state placement. Though the study primarily addressed out-of-state placement, reports that California receives a relatively large number of children from other states suggested the presence of important regulatory issues with regard to incoming children. Services for children are primarily locally administered in California, and intergovernmental relations in state-level regulation of child placement, especially in such large states, are important to out-of-state placement.

The Organization of Services

Policy is established and supervision is provided for county-administered child welfare services by the state Department of Social Services (DSS) within California's Health and Welfare Agency (HWA). Similarly, county-administered probation services are supervised by the California Youth Authority (CYA), and it also operates secure and nonsecure treatment facilities for delinquents, and aftercare services through its branch offices. The juvenile session of the superior court has juvenile jurisdiction in California. The state Department of Education (DOE) supervises locally-administered services in school districts throughout the state. Also housed within the HWA, the Department of Mental Health (DMH) provides institutional care for youth referred by the county-administered mental health agencies which it supervises. Institutional care for the retarded is provided by the Department of Developmental Services (DDS), also within the consolidated HWA. All local developmental disability services are provided by private not-for-profit corporations in regions covering the entire state. The state is a member of the ICJ and the ICPC, but not of the ICMH.

Out-of-State Placement Policy

DSS out-of-state placement policy is primarily a requirement that the ICPC be utilized. Procedural guidelines are those which are stipulated in the compact and codified in the agency's regulations. Additionally, preference must be given by local placing officials to placements which are the least disruptive to children's families and the least restrictive in the provision of services.

Similarly, CYA out-of-state placement policy is largely vested in utilization of the ICJ. The out-of-state placement of youth on aftercare are subject to individual approval by the agency's regional offices. Appropriateness and approval of out-of-state placements for probationers are locally administered decisions.

Out-of-state placements involving local education agencies must be to a facility approved by the state education agency. However, prior to investigating facilities in other states, preference must be given to placement in a child's home district. A less formal understanding prevails that in-state resources also be ruled out prior to out-of-state placement. The DOE participates in the funding of nonpublic placements, in or out of California, to a lesser extent than for those to public programs in the state.

The DMH and DDS do not have legal custody of children or the revenues needed for funding residential placements outside California. The DMH reported having no explicit out-of-state placement policy. The DDS has a policy that local expenditures of state revenue may only be made to state agency-approved programs, and approval is extended solely to settings in California.

Out-of-State Placement Practices

Considerable attention by the DDS has been devoted to improving the administration and quality of the out-of-home care system within California. The general improvement of case planning, licensing, and monitoring practices by local agencies has been a lack of attention toward assuring compliance with the ICPC utilization requirements by county child welfare agencies. Efforts have recently turned in this direction with the request for additional personnel for the compact operation, and with the issuance of updated and tightened policy guidelines for compact use by county child welfare agencies.

Local courts, and child welfare and probation agencies were known to place children out of state without ICPC involvement and openly acknowledged this fact in interviews. Lack of timely processing by the compact, sometimes involving months of delay, was cited as the chief reason for this practice. To assure greater compliance with the ICPC, and hence more reliable information on children residing out of California, local agenices and courts also are receiving training on ICPC policies and procedures. The compact administration is divided into two subunits, one dealing with foster care and relative placements, and the other with adoptions. It is the former subunit that has been most problematic, and which is the primary target for corrective action.

The CYA has experienced similar difficulties with the utilization of the ICJ for placements arranged by local probation agencies and courts. Again, it was reported by authorities in the CYA that a lack of compact use exists, but that the agency has no systematic method to determine noncompliance. The agency's approach to the problem has been somewhat less forceful than that of the state child welfare agency. Although compliance with the ICJ by local courts and probation agencies is viewed as highly desirable, it has not been made mandatory. County agencies use the ICJ on a discretionary basis. Local agencies reported that untimely processing of placements by the ICJ operated as a deterrent to consistent utilization. In addition, when using the compact, some local agencies generally contact the receiving local agency directly to arrange for a home evaluation and placement.

Local practices with regard to out-of-state placements are ideosyncratic to particular courts and probation agencies. Some make decisions on an individual basis, while others highly discourage the practice in general. Disparate development of community care alternatives among counties is a present source of concern, and the lack of nearby placement resources constitutes a potential contributing factor to the rate of out-of-state placements in some areas of the state.

In sharp contrast to the practices of local agencies, youth placed out of state for aftercare by the CYA were said to be consistently processed through the compact. Placements made for parole are systematically routed through the compact by a computerized information system.

Placements out of California involving local education agencies appear to be the best regulated among those made by public agencies in the state. Compact applicability has not been administratively extended to children placed out of state by these agencies; however, other regulatory procedures have been implemented. Out-of-state placements must be in a facility approved by the DOE to receive California children. Reimbursement is not made by DOE to those local placing agencies if children are placed in a noncertified facility. There is no immediate way to cross-check payment with the status of the facility, but payment to noncertified programs are detected through periodic audit procedures at the local level. There is a financial disincentive to place into nonpublic facilities, because these placements bring fewer state dollars in cost sharing. This policy indirectly mitigates against out-of-state placements. On-site inspection is optional for certification, which is usually accomplished through correspondence. A prohibition against out-of-state travel by state employees, except as personnally authorized by the governor, not only prevents improving the quality of inspection, but also prevents on-site monitoring visits by state officials.

Neither the DMH nor local mental health agencies reported independently arranging any out-of-state placements. Mental health agencies' involvement in the practice usually occurs in a diagnostic and advisory role to courts and probation and child welfare agencies. Because local mental health services to children are a lesser priority in many locales, youth who might be served by this sector were said to be frequently in contact with child welfare or juvenile justice agencies instead. Efforts have been made to upgrade services for children in the county programs by some state agency officials and legislators, with mixed success.

The state is not a member of the ICMH because there is a feeling that membership would increase opportunity for nonresidents to use public mental health services which are already in short supply. However, the DMH does have a Patient Transfer Office which has the primary mission of transferring nonresidents in state hospitals to their home state. Other compact-like functions are also performed by this office as a courtesy to other states.

The DSS also uses the Patient Transfer Office to arrange for interinstitutional movement between public facilities. Placements out of California by private agencies receiving state DSS funds are effectively controlled by the state agency's approval process. Out-of-state placements may be made through other public agencies, but this was described to be fairly infrequent and not subject to DSS monitoring.

Recommendations and Conclusions

Issues related to the out-of-state placement of children were not in the foreground of public concern in California at the time of the study. Instead, the improvements in administration, regulation, and monitoring of the in-state residential child care system was uppermost in the minds of many public officials. Residential care alternatives to state and local agencies are numerous, but their distribution, coordination, and control was less than optimal. As a result of efforts being focused on California's own child care system, out-of-state placement practices were receiving little or no direct attention.

Proposition 13 appeared to have little or no affect on the out-of-state placement of children. In fact, there was minimal affect by this measure on the level of services within the state. While it did not drastically affect essential services, it did change the way they were funded at the local level. State government assumed a greater share of the funding of locally administered services, which was supported by the state's surplus fund.

Recommendations for change that were offered usually concerned the processing of out-of-state placements in the first place. Deficiencies in ICPC staffing and information resources that were noted by compact respondents have recently been addressed in the DSS. This should increase timeliness of out-of-state placement processing, and hence ICPC utilization by county agencies. Similar improvements in CYA administration of the juvenile compact have not been evident.

In the area of mental health services, greater development of the uniformity in services for children offered by the county mental health agencies was recommended. Such development was seen as a way to intervene for children before their problems culminated in family disintegration and delinquency.

Finally, there was a call for the relaxation of restrictions on out-of-state travel by state employees. Facilitating access to out-of-state facilities would, in the minds of some officials, improve the quality of inspection and monitoring of out-of-state programs containing California children.

Louisiana

Reasons for Selection

The *Gary W.* case was litigated in Louisiana and culminated in an important judicial statement about rights to treatment for children placed by public child-serving agencies. The case gave rise to increased and centralized regulation of child placement in this southern state. The study assessed the effectiveness of these changes and their impact on placement services and resources in Louisiana.

The Organization of Services

Most services to children are administered and supervised in Louisiana by the consolidated Department of Health and Human Resources (DHHR). Responsibility for child welfare and all child placement services is vested with the department's Office of Human Development (OHD). The OHD's Division of Evaluation Services (DES) administers child welfare services in branch offices as well as regional review (placement screening) committees for placement referrals from other DHHR service units and from education agencies. Juvenile probation and parole are administered by OHD's Division of Youth Services (DYS), with the exception of seven parishes in which probation services are locally administered. The Department of Corrections (DOC), separate from DHHR, operates juvenile treatment facilities. Juvenile jurisdiction varies among Louisiana courts, usually vested with parish courts, but always with family courts where present, and sometimes with municipal courts in urban areas. The DHHR's Offices of Mental Health and Substance Abuse (OMHSA) and Mental Retardation (OMR) supervise and administer respective services in the state. The Department of Education (DOE) supervises locally administered educational services.

Out-of-State Placement Policy

All applicable out-of-state placements involving units of the DHHR are required to be processed through an interstate compact. In addition, all DHHR out-of-state placements in residential treatment and child care facilities must be approved by the DES regional review committees and by the secretary of the DHHR. Receiving facilities must also be approved by DES committees. Consideration for proximity to home and least restrictiveness must be clearly documented in placement referrals, especially those which recommend out-of-state facilities for care or treatment.

Out-of-state placements involving the DOE and school districts must also be arranged in accordance with DHHR policies and procedures when such placements are not solely for educational services. However, when education agencies wish to arrange for out-of-state placements which are specifically and solely educational in purpose, they may do so without DHHR involvement. The DOE has implemented a policy to regulate school districts which intend to place students into other states for educational purposes. This policy stipulates that the need for such placements must clearly be supported by children's need and individualized education plans. All Louisiana public educational resources must also have been ruled out as inappropriate before private placement, in or out of Louisiana, will be authorized.

Out-of-State Placement Practices

The Gary W. case very much influenced the development of current out-of-state placement policy in Louisiania and created a great deal of pressure to keep children in Louisiana. The state has consolidated accountability for placement referral, screening, and approval procedures. These policies, however, do not apply to placement into foster family care or with relatives, as they were meant to first address more restrictive placements, and include less restrictive placements in the review and approval process at a later date. The process effectively reviews and results in the approval of all applicable out-of-state placements initiated by public agencies in Louisiana. The practice was described, however, to be time-consuming and to sometimes severely delay placements. In addition, the policies have increased pressure for the development and utilization of in-state resources. Settings serving retarded and emotionally disturbed youth, who constitute the bulk of placement referrals received by the regional review committees, are in great demand. Some respondents reported that long waiting lists and less-than-appropriate placements have resulted from the tight restrictions on out-of-state placements. This situation is exacerbated by the fact that most placements by education agencies require some treatment component and therefore must be approved by the regional review committees. There was also reported to be widespread increases in emergency placements, which do not require prior committee review. Emergency placements, which are often continued by a regional review committee after the 60-day limit, were described on occasion to gratefully relieve the regional review committees of completely unmanageable case loads. Arrangements not involving the regional review committees for care have also evolved locally to expedite child placement. Juvenile judges play a strong role in this practice.

Increased reliance on residential care in Louisiana has caused many youth who were previously in out-of-state placements to be placed in public institutions. Admissions pressure on these institutions has led to concern that youth are prematurely discharged to prevent long waiting lists. Although efforts have been made to stimulate community-based alternative care in the private sector, stimulation has not matched the demand that exists for this type of residential care.

Compact utilization, as would be anticipated in such a centralized system of placement regulation, is extremely high for those youth going through the regional review committee and central approval process. However, placements to relatives, especially those arranged by courts, are not uniformly processed through a compact. It should also be mentioned that all committee-processed placements are regularly monitored and are reviewed annually to ascertain whether changes should be made in the child's treatment plan, especially in the level of restrictiveness associated with the setting.

Recommendations and Conclusions

Officials referring youth to regional review committees for placement were mixed in their reception of this new system. Some, acknowledging how recent the centralization has been, expressed hope that the process would become less time-consuming. Others view the procedure as an unnecessary bureaucratic encumberance, which removes from the process those most competent to make placement decisions. In other words, centralized child placement is not uniformly accepted by local workers. Field staff also expressed a need for clarification of the policies and procedures surrounding the regional review and placement process.

Respondents were, however, generally in agreement on the need for more placement resources in Louisiana. Increased mental health services to children and much greater stimulation of the private child care network were advocated to close the serious resource gap for emotionally disturbed, retarded, or otherwise handicapped youth. In the absence of these resources, appropriateness of care is in question because the state has come to largely rely upon its own institutions. Premature discharge could be prevented, it was said, if the regional review committees evaluated discharge as carefully as they address admission to these settings. One respondent observed that the state needs to take another look at the right to treatment and the appropriateness of care issues in the *Gary W.* decision.

Michigan

Reasons for Selection

This north-central state was selected, in part, because it was not a member of the ICPC. Enactment of this compact was being considered by the legislature at the time of the study. The state had mechanisms in place to process out-of-state placements in lieu of using formally prescribed ICPC procedures. Responsibility and supervision for out-of-state placement is also somewhat mixed in Michigan's dual child care system which has authority for child custody and supervision divided between the state social services agency and the courts. This suggested issues of comparability of care, regulation, and monitoring for children placed out of state by the courts and the state social services agency. Michigan was of further interest because of the flexible relationship that exists between the state social services agency and its branch offices. These offices have a measure of local control unusual to state-administered systems. Regulation of out-of-state placements was reported to be implemented with mixed success.

The Organization of Services

The Michigan Department of Social Services (DSS) supervises and administers child welfare and probation services through its branch offices. The DSS also operates juvenile corrections programs in the state, and supervises youth on aftercare through its branch offices upon their release from state facilities. The juvenile division of the local probate courts also plays a strong role in the provision of child welfare and probation services in the counties when they elect to retain jurisdiction over youth. Education services are administered by local and regional school districts and are supervised by the Michigan Department of Education (DOE). The Department of Mental Health (DMH) administers public institutional mental health and mental retardation services. The DMH also supervises county programs providing community-based mental health and mental retardation services.

Out-of-State Placement Policy

The DSS out-of-state placement policy is basically a requirement that the ICJ, and other placement procedures, be utilized. The other procedures have been formulated by the agency to be very similar to those prescribed by the ICPC, and are applicable to those out-of-state placements which are not subject to the ICJ, but which would be subject to the ICPC if the state were a member of that compact. Both the decentralized offices of the DSS and the local courts were reported to be subject to these policies. Other components of DSS out-of-state placement policy require that prospective out-of-state child care or treatment facilities be inspected and approved by DSS officials. There must also be documentation that in-state resources for placement have been exhausted. Placement officials must receive permission from the DSS central office prior to proceeding with arrangements for care in out-of-state facilities. Finally, the DSS has a policy of restricting federal AFDC-Foster Care funds solely for the provision of foster care in Michigan.

The DOE has implemented a legislative prohibition against the use of public funds to pay for private educational services by public agencies under its purview. Only services related to educational services may be purchased by the private sector, such as those which are diagnostic or habilitative. As a consequence, Michigan education agencies are for the most part restricted by policy from arranging out-of-state placements.

The DMH administers the ICMH to govern public interinstitutional transfers across state lines. Contracts with out-of-state private institutions for care and treatment of Michigan children by DMH public institutions must be approved by the DMH central office.

Out-of-State Placement Practices

Both dependent and delinquent wards are placed out of Michigan by workers in the branch offices of DSS and by the courts. Compliance with out-of-state placement policy, though better among DSS' own workers, was said to be incomplete for placements arranged by both of these sources. Untimeliness in DSS' processing of placements was said to be a disincentive to compliance. Wardship of a child tends to be related to compliance to the extent that state wards more frequently go through the interstate unit and, if applicable, to approved facilities. Delinquent or dependent court wards, either under the supervision of the courts themselves, or under the supervision of the DSS are less likely to be placed in full compliance with prescribed policy and procedure.

Besides reporting lack of full compliance with the policy requiring ICJ utilization or adherence to ICPC-like procedures, respondents indicated that the other components of DSS policy were not fully practiced. Out-of-state placements are sometimes arranged and funded without proper documentation that in-state resources were exhausted. Children have been placed in out-of-state facilities which had not been approved by DSS authorities. Also, as of the time of the study, the DSS had not been able to link funding reimbursement for out-of-state placements with policy adherence. It was further reported that the listing of DSS-approved out-of-state facilities included programs which had not been inspected or subjected to contract review for years. Although there is a DSS policy against the use of federal AFDC-Foster Care for out-of-state placements, the agency can and does grant exceptions to this rule. These observations and reports suggest that the out-of-state placement policies of the DSS had not been fully implemented, as evidenced by existing practices.

Increased attention was being given to the out-of-state placement issue at the time of the study. Serious attempts were being made to reduce the backlog in the interstate unit and efforts were being made to bring courts, and especially outlying branch offices of DSS, into compliance with policy. These efforts include the circulation of guidlines and procedures, and meetings and training sessions with courts and DSS personnel. In-state resources were said to generally be most lacking for emotionally disturbed youth and, consequently, these children are frequently among those leaving the state for care and treatment. In order to abate this trend, state and local authorities are attempting to influence the development of additional services for these children in Michigan.

The prohibition against the use of public funds for purchasing private instructional services effectively eliminates any prospect of out-of-state placement among state or local education agencies. Temporary placements have been infrequently made for very specialized diagnostic services, but invariably these youth return to Michigan for full educational programming. The fact that out-of-state resources are obviated as alternatives for placement has forced DOE to squarely confront the status of in-state resources. Most problematic in this area is the availability of appropriate services to emotionally disturbed children.

Substantial differences exist in the development of local mental health services to children but, for the most part, local agencies rely upon the state system for specialized services to children. The local agencies do not place children out of state, but state-operated institutions do engage in this practice, with little centralized regulation. Youth are placed into private psychiatric settings under state agency-approved contracts. Placement decisions are made at the regional level by state institutional officials and they are not subject to ICMH processing because receiving settings are privately operated.

There is a strong emphasis on community-based residential care for the developmentally disabled in Michigan. This emphasis has virtually eliminated the placement of these youth out of Michigan. A substantially developed network of publicly financed in-home care for the retarded stands in great contrast to the primarily institutional approach taken for residential care of the emotionally disturbed in the mental health system.

Recommendations and Conclusions

While some officials called for a complete halt to out-of-state placement, others focused their suggestions on improving the current system. In the DSS and the courts, there was a frequent call for improving the efficiency and effectiveness of out-of-state placement processing. Streamlining of the process used to demonstrate the exhaustion of in-state resources was also suggested. More effective policy implementation in general would, in the minds of some in DSS, be assured by increasing access to branch office operations to programs for children and policy specialists in the central office. Among DSS officials, there was expressed the need to divert less-troubled youth from private facilities to foster family care in order to better respond to children with specialized service needs.

In the area of mental health, greater accountability of the local agencies to the DMH, and the further development of local residential resources were advocated. The need for more appropriate care for emotionally disturbed children and youth was repeatedly pointed out across all agencies and levels of government. Expansion of the purview of the ICMH was also recommended. Respondents involved with the ICMH were concerned that children placed in private mental health facilities, as well as in community-based public residential treatment, were not receiving the same compact protections as those who were transferred from a DMH institution to a comparable public setting in another state.

Education officials called for an interstate consortium similar to a compact to control education placements across state lines. They were concerned about the fact that youth may be placed, for example, into Michigan with their educational expenses paid by the sending state, only to receive publicly financed educational services in Michigan. Education officials also called for increased resolve to provide better service to the most difficult cases, especially emotionally disturbed older adolescents, who sometimes escape appropriate programming because of the scarity of residential settings responsive to special needs in some areas.

Finally, there was recognition of the need to clarify authority and responsibility for services to children between the courts and DSS. This is an area of conflict and confusion for both parties. Greater definition of roles and responsibilities could aid more effective implementation of the Michigan out-of-state placement policy for delinquent and dependent youth.

New Jersey

Reasons for Selection

New Jersey has experienced unusual legislative and executive involvement in the regulation of out-of-state placements. Several studies have been done on the practice in the state, and the governor has issued a prohibition against placing children outside of a 50-mile radius of the state, except in unusual circumstances. Also of interest is the fact that the governor's mandate did not apply to all public agencies in the state. New Jersey is not a member of the ICPC.

The Organization of Services

The consolidated Department of Human Services (DHS) administers and supervises most youth services in New Jersey. The DHS' Division of Family and Youth Services (DYFS) administers and supervises child welfare services. The DHS' Division of Mental Retardation (DMR) administers institutional and residential developmental disability services in the state. The Division of Mental Health and Hospitals (DMHH) fulfills a similar role in its service area. The Department of Corrections (DOC) operates juvenile institutions and administers aftercare. Locally-administered probation services are supervised by the Administrative Office of the Courts. The juvenile and domestic courts have juvenile jurisdiction in New Jersey. The state Department of Education (DOE) supervises locally administered education services.

Out-of-State Placement Policy

A 1977 gubernatorial mandate to limit out-of-state placements to a 50 mile radius of the state line was imposed on the DYFS. The requirement was subsequently incorporated into agency policy, with the exception of placement for specialized services which clearly could not be made available in New Jersey. Field staff of the agency referring youth for out-of-state placement must document the exhaustion of in-state public and private resources. The DYFS director must sign off on placements within the 50 mile radius, and the DHS deputy commissioner must approve placements beyond that limit. The agency also developed ICPC-like procedures to better control and protect children in out-of-state placements for adoption, foster care, and to live with relatives. In addition, the agency must notify the courts and associated child review boards of residential placements in and out of New Jersey, and secure information for their review from out-of-state settings.

Out-of-state placements arranged by courts are required to be processed through the court administrator's ICJ office. Those placements arranged by the DOC for aftercare or by the DYFS for transfer of probation supervision are to be processed through the ICJ office in the Division of Policy and Planning of the DOC. In other words, the administration of the ICJ is divided between two different state-level agencies.

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Out-of-state placements involving education agencies must be made to facilities on an approved list maintained by the DOE. These facilities must be within a 400-mile radius of Trenton, except where authorized by the DOE commissioner.

Nonhospital residential care is not provided by New Jersey's mental health system, and it makes no out-of-state placements to these settings. If this type of care is required, referral is made to the DYFS and those referrals for out-of-state placement are subject to the same policy as for similar referrals by education agencies. Interinstitutional transfers between public institutions in and out of New Jersey are to be made subject to the procedures of the ICMH.

The DMR does have funds for residential care, yet this agency is not subject to the executive action of 1977 and subsequent policies. Out-of-state placements by the agency were said to be strongly affected by parental preferences and the availability of appropriate care for retarded children in New Jersey.

Out-of-State Placement Practices

Out-of-state placements have been greatly reduced since the 1977 executive action and resulting centralization of screening and approval. The centralized approval process has made placements more difficult in a bureaucratic sense, in addition to subjecting caseworker's referrals for out-of-state placement to much greater scrutiny than in the past. In addition, the number of out-of-state facilities approved to receive New Jersey children has been greatly reduced. Only two facilities outside of the 50-mile limit remain on the approved list. Placements to these two facilities were reported to be very rare, and they were retained as approved facilities because they are perceived to offer services which would be very difficult to replicate in New Jersey. All out-of-state placements which are arranged are carefully processed by thorough documentation of need, and by central office authorization procedures. In approving placements and facilities, there was described to be considerable efforts to match children to settings which would assure appropriateness of care. Further, receiving facilities are notified of New Jersey child review board requirements, and are made aware that information will be required about placements for this court-attached oversight body.

Funding constraints of other public agencies generally work to channel children needing residential care or treatment to the DYFS. In the area of education, DOE reimbursement for locally-arranged residential placements is adjusted according to legislatively determined handicap classification categories. Classifications of individual children must be approved by local administrators. Costs of placement frequently exceed handicap-based DOE reimbursement and the local school district elects not to cover these additional costs. Referral is then made to the DYFS. Courts and state mental health centers are not budgeted to absorb the costs of residential treatment in private child care facilities. In general, the funding constraints of other public agencies generally work to channel children needing residential care or treatment to the DYFS. Courts, school districts, and DMHH community mental health centers use the placement services and revenues of the DYFS, with the net effect that children placed out of state in residential facilities from these agencies are generally subject to its restrictive out-of-state placement policies. Although this is in some cases an unhappy situation for these other agencies, because of delays and unsuccessful placements, they have few other alternatives for children needing residential child care. Exceptions occur in the case of relatively inexpensive placements, such as with relatives. Court-initiated placements of this type do not receive uniform ICJ involvement. Similarly, the DOC may place youth outside of the 50-mile limit for aftercare with relatives. The DMR is also not specifically subject to this restriction, but unlike the other agencies, it has a sizable residential care budget. The agency substantially, relies upon out-of-state care, frequently outside of the 50-mile limit, and is not subject to any compact or other systematic regulatory device.

Placement for foster care, adoptions, and to relatives by the DYFS receive less-rigorous regulation. Compliance with New Jersey's ICPC-like procedures is not uniform among field workers, and methods to bring compliance involve the distribution of policy memoranda.

Recommendations and Conclusions

New Jersey respondents called for the development of a full range of in-state services, especially for emotionally disturbed and aggressive youth. This need was linked to the reduction of such services previously obtained in out-of-state facilities. Clarification on the centrally administered out-of-state placement policies was also said to be needed. Persons involved in out-of-state placement called for the state to join the ICPC.

Institutional placements are clearly better regulated now than they were in the past, with the exception of the DMR. It seems to be unusually divorced from the movement toward increased regulation, and independently continues to place large numbers of children out of state.

New York

Reasons for Selection

This northeastern and second most-populated state has experienced considerable litigative, media, and executive activity related to out-of-state placement. A class-action suit important to out-of-state placement, Sinhogar v. Parry, was instrumental in the development of an interagency human services cabinet. Like California, the state is characterized by locally administered services, which posed interesting intergovernmental issues.

The Organization of Services

Child welfare services are supervised by the state Department of Social Services (DSS) and administered by county departments of social services. A similar scheme exists in probation, where each family court receives services from an independent county probation agency which is supervised by the Executive Department's Division of Probation (DOP). Juvenile corrections and aftercare are administered and supervised by the Executive Department's Division for Youth (DFY). Institutional and community residential services are supervised and administered by the state Offices of Mental Health (OMH) and Mental Retardation and Developmental Disabilities (OMRDD) in their respective areas. In addition, the OMH supervises county-administered mental health agencies. The State Education Department (SED) supervises locally administered educational services.

Out-of-State Placement Policy

The out-of-state placement policy implemented by the DSS is primarily a requirement that the ICPC be utilized. Though out-of-state placements are discouraged, there is little other official policy regulating local agencies' involvement in such placements. The child welfare agency in New York City is, however, prohibited by local policy from placing children in out-of-state facilities for care or treatment.

The DFY and DOP also require compact utilization as their out-of-state placement policy. The administration of the ICJ is shared between these two offices. In addition, the DOP uses the adult Probation and Parole Compact, which it also administers, to transfer youth who are legally adults in New York to other states where they are considered to be juveniles. It was reported that this compact is used to bring youth under juvenile jurisdiction in the receiving state.

The SED requires written rejections from in-state programs, approval of the agency's commissioner, and placement to an approved facility prior to payment for educational services in an out-of-state facility.

Neither the OMH nor OMRDD place children out of state. The latter agency will not approve any program outside of New York to receive children from the state. An office intermediary to these two agencies administers the ICMH for public interinstitutional transfers across the state's borders.

Out-of-State Placement Practices

The Sinhogar v. Parry case discussed in Chapter 3 gave rise to strong sentiment against out-of-state placements in institutions. A radical reduction in these placements, interagency efforts at regulation, and the return of children already placed out of New York was spawned by this and other litigation in the state. Every facility containing New York children has been inspected by an interagency team, and every child placed in these facilities has been visited and evaluated for potential to return to New York. Contrary to similar movements in other states documented by the Academy's research, change in New York took place almost entirely without enacting legislation or executive regulation. However, the diminution of the practice was strongly supported by the legislature, the governor, and executive agency management.

The DSS has a mixed history in its efforts to regulate local agencies. However, since heightened concern in government over out-of-state institutional placement, a ban on the practice was instituted in New York City, and only a few children have been placed by agencies in the rest of the state for such care. Placements least regulated are those to relatives, for adoption, or for foster care, and there is little evidence that heightened regulatory concern has spread to this area.

Dramatic development of specialized in-state care, linked to a new reimbursement schedule vary by the intensity of services provided, has also occurred. The children who were placed out of state, largely from New York City, were emotionally disturbed and handicapped. Resources for these youth remain most deficient in the state. Out-of-state reimbursements will not exceed those for similar care in New York, and the level of care provided by receiving facilities must be documented before they are eligible to receive state funds. Use of programs providing the most intensive levels of care must be negotiated on a bed-by-bed contractual basis, rather than by general subsidy contracts with facilities providing less intensive levels of care. In many ways, DSS control over the local agencies has grown over the past two years, but not so much as to account for the almost complete decline in the practice. The DSS is now confronting historically poor permanancy planning practices at the local level, and is funding foster care prevention programs to keep as many children as possible in their own homes.

Interestingly, compact involvement in the movement to reduce out-of-state placements has not been pivotal. The ICPC is consistently used for the few placements to facilities, but its staff reported that this was not necessarily the case for noninstitutional care and treatment. The ICPC was reported to be without adequate resources to aggressively address this problem.

The state's education system is the most active in arranging out-of-state placements among New York public agencies. However, the number of children placed by local education agencies has also been greatly reduced over the past three years. Policies appeared to be well implemented in terms of the exhaustion of in-state resources, placement to approved facilities, and procurement of the SED commissioner's approval. Some indication was given that, in the future, this agency may be the only one in New York allowed to make out-of-state placements to facilities.

The DFY is minimally involved in placing youth out of New York. It administers the ICJ for transfer of parole supervision for placements with relatives, and enjoys fairly consistent compliance by field workers in that regard.

Local probation agencies and courts reportedly do not have budgets sufficient to support expensive residential placements. However, the courts can and do order placements for which state and county social service agencies must pay. This, as well as compact compliance by courts, is troublesome to many persons interviewed in New York. Courts and probation agencies also arrange out-of-state placements with relatives and other free settings. It was reported that ICJ involvement with such placement is not routine.

The OMH does not make out-of-state placements, but it does use the ICMH for public interinstitutional transfers across state lines. The only problems experienced in this area relate to noncompact placements by other than mental health agencies which result in a child requiring psychiatric hospitalization in another state. It has been difficult to arrange for the return of these children if a compact has not been used to extend New York's agencies' responsibility into the other state.

The OMH and local mental health agencies have taken some criticism for not providing sufficient and appropriate services to emotionally disturbed youth. Local mental health agencies generally have not assumed this responsibility, instead relying upon the inpatient and outpatient services provided through OMH institutions. Increasingly, however, specialized community-based treatment is being purchased to fill this void. To date, there remains a substantial gap in this area.

The OMRDD also does not place children out of New York. Funding is only available to agency-approved residential care and there are no approved programs outside the state. In response to the reduction of out-of-state placements and the return of those children already placed out, the agency has substantially developed its intermediate care resources to meet the increased need. The press for these beds, however, is so strong that often children on long waiting lists in New York have filled a new bed before a child placed out of state could be returned to the state.

As a final note, it was reported that an interagency committee is working toward having only one list of facilities approved to receive children placed out of state by any New York public agency. It is also working toward the development of centralized placement monitoring.

Recommendations and Conclusions

Officials in New York frequently recommended that interagency coordination and planning of services be improved. This general recommendation was widely heard and it took on different forms. Respondents called for consolidation of the compacts and establishment of a centralized agency to match children with available and appropriate placement settings. Better collaboration between the public and private sector, which figures so prominently in New York's child care system, was also urged.

Many respondents called for an improvement, and some for the centralization, of placement and facility monitoring. Nowhere else was there expressed a more vocal concern for the quality and equality of child care across public agencies and across public and private sectors.

The need for development of mental health services for children, and especially adolescents, was also widely heard. Resources for emotionally disturbed youth, including those who are aggressive or delinquent, were said to be particularly lacking.

Finally, persons expressed that early planning and referral to care in the adult system for handicapped youth should be given more consideration. Also in this vein, there was a recommendation that the state undertake aggressive efforts toward the prevention of out-of-home care.

Virginia

Reasons for Selection

Legislative support and bureaucratic strengthening of out-of-state placement policy have been especially prevalent in Virginia. A trend in the state toward centralized processing of placements from different types of locally administered agencies through the ICPC is unprecedented in the nation. Virginia has been characterized as a model state with regard to the implementation of this compact.

The Organization of Services

The Virgina State Department of Welfare (SDW) supervises child welfare services which are administered by county and municipal public welfare agencies. Similarly, locally administered educational services are supervised by the state Department of Education (DOE). The Department of Corrections (DOC) supervises and administers juvenile corrections services and, in some areas, juvenile probation services. Other locales administer their own probation services under DOC supervision. The state juvenile and domestic relations courts have juvenile jurisdiction in Virginia. Virginia's Department of Mental Health and Mental Retardation (DMHMR) operates inpatient and community residential treatment for emotionally and developmentally impaired youth. The DMHMR also supervises locally administered mental health and mental retardation services which are under the auspices of county and municipal governments. The state was once a member of the ICMH but has withdrawn from that compact.

Out-of-State Placement Policy

Much of Virginia's out-of-state placement policy has been strengthened and centralized in the SDW. The purview of the ICPC has been administratively extended to include out-of-state placements to private residential settings providing medical, psychiatric, and special educational services.

Out-of-state placements by local child welfare agencies are to be approved by the commissioner of the SDW, processed by the ICPC, and go to SDW-approved facilities. School districts and local mental health and mental retardation agencies must also route out-of-state placements through the child welfare system's required steps, except that those made by school districts must go to facilities approved by DOE rather than by the SDW.

Court-ordered out-of-state placements of dependent children and status offenders must also receive ICPC processing and the approval of the commissioner of the SDW. Referral of custody of these children to the child welfare system is optional. Courts placing adjudicated delinquents out of state to facilities must gain approval of the DOC director, use the ICPC, and place youth in SDW-approved facilities. Alternatively, the courts may refer delinquents for placement in out-of-state facilities to the local child welfare agencies, bringing those agencies' policies to bear on the placements. Courts transferring probation supervision of delinquents to other states are required to use the ICJ, as is the DOC for transfer of parole supervision out of state. The applicability of the ICPC to DOC placement of delinquents to out-of-state facilities is in contention between the SDW and the DOC. SDW policy states that such placements should be routed through its system, approved by the commissioner of the SDW, processed through the ICPC, and go to a SDW-approved setting. The DOC, on the other hand, maintains that such placements receive approval of the director of the DOC and go to an agency-approved setting.

The DMHMR processes all public interinstitutional transfers across Virginia's borders. These agencies do not make placements for residential treatment, in or out of Virginia, other than to their own state-operated facilities.

Out-of-State Placement Practices

Local mental health agencies and other service agencies for children frequently refer children to the local child welfare agencies because they are the primary source of placement services and funds in the state. Each child welfare agency has an institutional placement committee, and all children referred for services become subject to the state agency's out-of-state placement policies. Deviations from policy requirements by local child welfare agencies are rare, and they usually take the form of making emergency placements which are retroactively brought into compliance with the terms of the ICPC. Compliance with state policy is checked by ICPC officials through the state's foster care monitoring system and by reviewing reports on expenditures for care by local agencies.

There has been some difficulty in gaining the cooperation of the DOC and local education agencies toward centralized out-of-state placement processing in the SDW. Differing interpretations prevail as to the applicability of the ICPC to the placement of adjudicated delinquents in out-of-state facilities between the DOE and the DOC. Applicability to the education sector has, however, been worked out, operationally extending the purview of the ICPC to special education and habilitative out-of-state placements by school districts more so than in any other state.

This policy development extends state regulation to one of the sectors most active in placing children out of state. Education agencies previously placed many children across state lines without the requirement of DOE approval. Although the state agency maintains a list of approved facilities, frequently children are placed in nonapproved settings which must then be certified by the DOE after placement has occurred. Local education agencies contract directly with out-of-state facilities, with the DOE playing a minimal role in placement decisions. A project to develop core standards for residential child care is being conducted as an interagency effort, attempting to address the problem of multiple licensure and approval criteria among Virginia public agencies.

Somewhat of a disincentive exists among school districts to place children out of Virginia in the fact that local education agencies must pay 50 percent of nonpublic placement costs, as opposed to a much lesser proportion for public services. However, the local agencies appear willing to pay this price, especially in the very wealthy northern area of the state which has proven most difficult to regulate.

Placement of delinquents for residential treatment outside of Virginia by the DOC was reported to be very rare. The practice is discouraged because of expense and difficulty in monitoring placements. Nonetheless, the SDW maintains that these types of placements are now under the purview of the ICPC and related agency procedures. The DOC does, however, place children in home-like settings in other states with the transfer of probation or parole supervision arranged through the ICJ. Utilization of the ICJ for similar placements by courts and local probation agencies was said to be less consistent than for placements made by the DOC. Courts are largely restricted to this type of placement because funding for residential care is mainly available through interagency placements arranged in coorperation with local child welfare agencies. The state-administered courts are not budgeted for placement services by their central administration, and only those courts in the most affluent areas have placement funds directly at their disposal. SDW knowledge of applicable out-of-state placements by courts is facilitated by their reporting to the ICPC office all court-initiated placement of dependent children or status offenders with relatives. This reporting by courts was said to have greatly improved in recent times. However, DOC monitoring of out-of-state placements of delinquents by the courts has been observed to be severely lacking, and measures to alleviate this problem are still forthcoming.

Courts have ordered local education agencies to provide funding of tuition for placements as a way of generating some supplemental revenues for purchasing specialized services. This also is a strategy for circumventing SDW or DOC approval and monitoring mechanisms because these agencies are not involved in funding these placements. However, the authority of courts to issue such orders is being negotiated, and the effect appears to be that it will become more circumscribed.

Except for public interinstitutional transfers, the out-of-state placement activities of the DMHMR and local mental health and mental retardation agencies invariably occur in an interagency context. This has the effect of bringing placements involving these agencies under the policies of the SDW.

Recommendations and Conclusions

Despite difficulties in implementing a broadened purview of the ICPC and SDW regulatory authority, and some problems in monitoring courts and wealthy northern counties, Virginia is a model state in its implementation of the ICPC. The broad application of this compact and the consistency of its utilization is exceptional among member states, as is the legislative support it has received. The frequency of out-of-state placements has reportedly declined with the growth of interest in and regulation of practices. Implementation of the ICJ in the state is also effective, but less so, having not received similar strengthening in authority and resources. There was recommended increased regulation and scrutiny in relation to the courts to improve the tracking of out-of-state placements from that area.

As in other states, emotionally disturbed and retarded children are most frequently referred for out-of-state placement involving residential treatment facilities. The reduction in placing these youth out of Virginia has reportedly illuminated the lack of appropriate resources at the state and particularly at the local level to address their treatment needs. Pressure has increased on existing public institutional services. In addition, interagency cooperation between the courts, the DOC, and the DMHMR and local mental health and mental retardation agencies has at times been lacking. While the state has established a benchmark in the regulation of out-of-state placements by which others might gauge their success, Virginia is similar to other states in its need to develop responsive in-state services for hard-to-place children.

TRENDS IN OUT-OF-STATE POLICY AND PRACTICE

This section presents a synthesis of trends observed in out-of-state placement policy and practice. These observations were derived from a comparative analysis of findings from the seven case study states and are organized according to each major area of services to children. Efforts have been made to comment upon trends in state and local government regulation, funding, and administrative procedures associated with out-of-state placements. In addition, consideration is given to possible trends.

Child Welfare

This service area typically administers a significant proportion of the federal funds which support child placement. Federal funds used by child welfare agencies that finance out-of-state placements come primarily from the Aid to Families with Dependent Children--Foster Care (AFDC-FC) program and, to a lesser extent, from the Title XX, Supplemental Security Income (SSI), and Medicaid programs. Revenues from the latter two programs are generally used to pay for specialized care for retarded youth. Though funding information was very difficult to isolate in states, and therefore not consistently collected, it seems that federal funds made available to the states other than AFDC-FC are rarely used to pay for out-of-state placements. Further, a substantial portion, if not a majority, of costs associated with out-of-state placements seem to be paid for by state and local revenues. Funding of placements through state child welfare agencies is usually linked to family income, or some agency or court intervention related to unacceptable care for or control of children by their families.

Because child welfare agencies have such broad responsibilities for placement services, the placement resources they require cover a wide range of settings. In many states, there is substantial reliance upon private providers for specialized services, and where these services are not present at adequate levels, reliance frequently turns to specialized private providers out of state. Rarely if ever were out-of-state placements arranged by child welfare agencies for core agency services, such as child protection, shelter care, or the initiation of foster family care with persons other than relatives. Out-of-state placements with relatives and for adoptive purposes are very common among these agencies. Inadequate in-state placement resources usually involve specialized care for disturbed or handicapped dependent children or status offenders. These children, along with those placed with relatives, are those most frequently placed out of state.

The ICPC is implemented with mixed success by state child welfare agencies. Placements least likely to go through the ICPC are those which are court-initiated, including the placement of dependent children with relatives and the placement of delinquents in private institutions. Compact implementation is generally much more consistent in state-administered systems. However, regardless of the type of system, concern was consistently voiced that without firm support from high-ranking officials and adequate fiscal allocations, compact offices lack the visibility or authority to enforce compliance.

The development of regulatory procedures was observed to sometimes occur outside of existing compact operations and to not substantially affect compact compliance for some types of out-of-state placements. In addition, supplemental regulatory mechanisms to compacts which are employed by states attempting to improve the control of out-of-state placements appear to gain greater compliance than the compacts themselves. These efforts may center on regulating the appropriateness of individual placements, by regulating out-of-state facilities receiving children, or both. Generally, though, state regulation of facilities at the exclusion of individual case reviews is associated with locally administered systems, and is implemented with uneven success. Review of case management decisions with regard to the placement of individual children is associated with state-administered systems, which are also likely to reserve the right to approve receiving settings as well.

The relationship between courts and child welfare agencies is an important factor in the success of state and local executive policy implementation. Courts have varying degrees of authority to order out-of-state placements in specific settings. Child welfare agencies characteristically have to pay for these placements if fees for services are involved. Courts which engaged in this practice typically do not enjoy smooth relationships with child welfare agencies. In many states, courts are also charged with oversight of child placement practices in child welfare agencies. This responsibility is undertaken with varying degrees of rigor and success, ranging from a cursory review and disposal, to very conscientious monitoring programs which sometimes involve citizen committees. Conflict over child care authority and decisions are common between courts and child welfare agencies. However, where the conflicts can be minimized, courts appear to be much more willing to see that the policies and procedures of the child welfare agencies are observed. When the two parties in child placement have a good relationship, compacts appear to be utilized by courts more consistently and court jurisdiction is less likely to be prematurely terminated once children are placed out of state.

Substantial reform in child welfare policy and practice regarding out-of-state placement is rarely initiated from within the agencies themselves. In the states studied, reform was characteristically linked to actions by the executive office itself, or through the legislature and courts; and it was almost always associated with child advocacy and media attention. This does not detract, however, from the fact that some states are moving to further develop policies and improve practices within existing structures and in the absence of outside pressure.

The prevention of inappropriate out-of-home and out-of-state placements is the focus of activity in some of the states studied. Some agencies with a history of poor case planning are requiring that case plans indicate if and how permanency will be realized for children. A shift in the level of care provided by the private sector is also attempting to be made in several states. Less-troubled youth in voluntary agency care are being shifted to foster family care or kept in their own homes, and those children who pose more difficult care and treatment problems are being referred to voluntary agencies. These are children who are most likely to be placed out of state. The prevention of inappropriate out-of-home care is also the focus of efforts in some states, involving intensive in-home services to prevent placement or make it as short as possible.

Education

Federal, state, and local revenues pay for out-of-state placements arranged by education agencies, with federal funds coming from the Education for All Handicapped Children Act (P.L. 94-142). Funding for placement by education agencies, in or out of the state of residence, is based on the level of handicap rather than on parental income or inadequate care or supervision. Use of education funds for out-of-state placements is highly mixed among states. Some states use the funds to pay for all placement costs, some just for tuition, some for the tuition costs associated with placement by other agencies, and others prohibit these funds from purchasing nonpublic instructional services. The extensive use of P.L. 94-142 funds to finance out-of-state placements raises some question as to the consistency of this use with the intent of the act. "Least restrictiveness" is a very strong element in the language of the act, as is "appropriateness."

Children are placed out of state by education agencies for specialized care. These would include programs for emotionally disturbed, retarded, and multihandicapped children. Services to these children were most frequently described to be absent in the states that were studied. Similar to child welfare agencies, placements are not made for fairly basic services such as for mild learning disabilities. Out-of-state placement seems more linked to behavior problems and retardation of varying degrees. These placements frequently differ, however, from those made by child welfare and juvenile justice agencies in an important way. Central to the child evaluation and placement process put forth by P.L 94-142 is the stipulation that parents be involved, and that they approve the special services their children are to receive. For that reason, out-of-state placements arranged by education agencies may be characterized as being voluntary in nature far more frequently than for similar placements by the other agency types.

There is no interstate compact governing education placements and only one state has extended the purview of an interstate compact to cover these placements. However, state education agencies permitting nonpublic school placements invariably maintained a list of out-of-state facilities approved to receive children. Some approve programs on a case-by-case basis as children are nominated for out-of-state placements. Others establish a group of facilities from which local agencies may select settings for particular children. This second strategy may be most economical because children are clustered in a few approved facilities, which reduces travel costs and paperwork for payment and approval. However, proponents of individually selected programs would likely argue that this approach better assures appropriateness of services for particular children. It also seems more common among education agencies that executive-level approval is required to be given for out-of-state placements than in the other types of agencies studied.

Education agencies are becoming more involved with the courts now that they have substantial budgets and programs for children. In some areas, they have challenged or resisted court orders to provide services, citing requirements contained in state and federal law as removing them from such court action. Other education agencies provide for parents to obtain service by petitioning a court. The relationship between these two sectors is in the early stages of being resolved, and much uncertainty prevails.

There were not discovered as pronounced reform and prevention activities among education agencies in out-of-state placement policy and practices as were discovered among other agency types. They generally operate better-regulated programs than the other agencies and are often outside or only partially involved in reform efforts which occurred in the states. This may also be due to the fact that educational services are typically not associated with the service system for children, and are often unique in their placement in state government. In some states, the state superintendent is an elected official, and in many others the education agency is not subject to the same executive oversight and allocation authority as child welfare, juvenile justice, and mental health and mental retardation agencies.

Juvenile Justice

Funding for privately provided treatment of delinquents comes from state, local, and federal funds. Child welfare-administered AFDC-Foster Care funding was the only source of federal funds that was identified. Other care costs are provided by state and local governments.

Out-of-state placements are arranged by juvenile justice agencies for a variety of reasons. Youth are widely placed out of state to live with relatives, with continued probation or parole supervision. Sometimes youth are placed out of state with relatives as an alternative to public institutionalization. More reflective of the status of in-state resources are the placement of adjudicated youth for treatment programs in other states. These placements are almost invariably arranged by courts and probation officials rather than by public corrections officials. Typically, these placements are made to programs specializing in delinquency treatment and youth placed were often said to be emotionally disturbed. Placements frequently occur to a favorite program of the court, such as Boys Town, and as an alternative to in-state public institutionalization. Especially for the emotionally disturbed delinquents, state and local treatment resources seem to be substantially related to the frequency of out-of-state placement by juvenile justice agencies.

The extent of ICJ compliance among states varies a great deal. Courts were found to be the area most difficult to bring into compliance, with the court-to-court ethos sometimes mediating against executive agency involvement. As with the ICPC, compliance with the ICJ is more consistent in state-operated probation systems, and a high rate of utilization was discovered among state juvenile corrections agencies. Some states view the compact as a legal requirement and actively pursue agencies subject to it to gain greater utilization and compliance, applying available leverage to increase utilization. Other states view compact processing as an optional procedure, citing the text of the compact and the ICJ administrators manual in support of this stance.

Rarely was there discovered consistent utilization of the ICPC for the out-of-state placement of delinquents in residential facilities. This finding applies to courts and state and locally-administered probation agencies. Often these agencies were not even aware of the provision for these placements in the ICPC. Methods of regulating the placement of delinquents out of state, other than through existing compact procedures, are generally more fragmented across the states studied by these agencies than for child welfare and education agencies. This is partially due to the autonomy of courts in placement decisionmaking, and the lack of firm state supervision of locally administered probation agencies. The out-of-state placement of youth by state probation agencies are sometimes restricted to agency-approved facilities and require central office approval. This is rarely the case for locally administered court service agencies. In one state, court-initiated placement to an out-of-state facility requires approval of the state juvenile corrections agency.

Child placement and reform efforts have not focused on the juvenile justice system in the same way as for other agencies. Instead, the deinstitutionalization of status offenders and diversion of youth accused of delinquency offenses have taken primacy. These efforts have placed added pressure on the community placement system and may have contributed to the incidence of out-of-state placements. However, these efforts appear not to have been nearly as influential in the out-of-state placement practices of other agencies as the deinstitutionalization of retarded and emotionally disturbed youth.

Mental Health and Mental Retardation

Placements into settings providing psychiatric or developmental disability care are funded with state and local funds, supplemented by federal SSI and Medicaid funds for income-eligible youth. These placements, however, are rarely made by state or local mental health and mental retardation agencies primarily because they do not have legal custody of children and associated authority to make out-of-home placements. Many of these agencies, especially in the area of mental retardation, do disperse child welfare-administered federal funds, as well as their own allocation in state and local funds, for placement services. Custody of children, however, is held by courts, other public agencies, or retained by parents.

One of the strongest and most consistent trends found in all states was the lack of appropriate residential care for emotionally disturbed and severely handicapped youth. Specialized treatment, especially for emotional disturbances, was found to be underdeveloped across the continuum of restrictiveness from institutions to foster family care. Concern about the dearth of resources of this type were strongly voiced and there were three factors cited that have converged to form this problem. First, the trend toward deinstitutionalization of these youth has brought the need for intensive treatment programs to the community. There is a pressing need for these services, and for policy development to support and maintain them since the strong shift away from reliance on large public instituitons.

Second, many local and smaller private sector child care agencies have generally been rewarded for equipping themselves to care for cases requiring less intensive treatment services. Accordingly, in many ways, they are out of pace with current child placement trends. They were caught unprepared to mediate between two events in a classic policy trade-off of institutional care versus placement into other states. In many ways, the private sector is largely dependent on funding patterns and placement practices of public agencies. When placement practices and needs shift without corresponding changes in funding, there can be expected to develop these kinds of resource gap. This is, of course, not true of the large, nationally known private child treatment institutions whose business it has been over the years to provide highly specialized services. What are referred to here are the small to medium-size locally accessible treatment programs which frequently work hand in hand with their respective public agencies at the community level.

Third, the responsiveness of mental health agencies, both state and local, was described to be inadequate to the special placement problems posed by the emotionally disturbed. Mental health officials were found to be their own toughest critics on this issue, and the lack of appropriate mental health services to children was widely acknowledged at the state and local levels. There is a great deal of variance in the development of residential and nonresidential programs for children and youth among and within the case study states. In some places, this has caused reliance upon traditional state institutional-type systems for mental health services to children. Those children inappropriate for such institutional care may frequently become routed into the courts or juvenile justice or child welfare systems.

The problem of resources is not so pronounced among mental retardation agencies which have moved to develop community group care. In some states, the development of these resources has brought a complete halt to placing retarded children out of state. Other states still strongly rely upon out-of-state resources to care for these youth.

There is no compact regulating the placement of children in private psychiatric and medical settings. The ICMH applies only to the interstate transfer of individuals between public institutions. One state mental health agency which administers the compact places children in private psychiatric settings in other states with no compact processing.

There is a notable lack of out-of-state placement policy in state and local mental health agencies. This may be appropriate at the local level because these agencies are rarely directly involved in the practice. Their role comes in the provision of diagnostic and advisory services to other local agencies. The mental health agencies which do license or certify treatment settings generally, but not always, restrict such approval to programs in their own state. The same finding generally applies to mental retardation agencies.

Early efforts are under way to close the serious resource gap for hard-to-place disturbed children between home care and institutionalization. Proposals have been made for publicly supported systems of community-based residential mental health treatment. Suggested systems involve the deployment of treatment settings having a continuum of structure, ranging from specialized foster family care to fairly open group care, to much more supervised group care treatment. In most states, the mental retardation services are much farther into implementing this concept, but there are exceptions, where states substantially rely upon the resources of other states for the care of their mentally retarded children.

CONCLUSIONS

A summary of primary conclusions that may be drawn from the seven case studies appears below. These conclusions address the central trends found relevant to out-of-state placement policy development.

Attention to out-of-state placement policy and practice is becoming more pervasive and is related to the more general concern about children in out-of-home care. Over the past five to seven years, out-of-state placement has become the focus of increasing attention in all sectors concerned with children's rights and well being. Media and advocacy attention have typically been the impetus of the numerous changes in public practices which have occurred. The case studies document important legislative, judicial, and executive policy developments which have affected out-of-state placement practices under their purview. Other important areas of change which are pervasive, and less visible to the public eye, are the efforts of many public officials to adjust practices and procedures through existing bureaucratic structures. In each state that was involved in a case study, state agencies were at least examining existing channels of out-of-state placement regulation for their effectiveness. In some of these states, changes were being effected which have pronounced effects on existing placement systems and the children subject to them. The number and types of children leaving some states are changing, while in others the circumstances surrounding their departure are becoming more tightly controlled.

Changes in out-of-state placement policy, and in the philosophy underpinning these policy shifts, were frequently found to be caught up in larger concerns about the effectiveness and efficiency of out-of-home care. In the minds of some officials, values related to observing children's best interests and preserving family life are more frequently coming into conflict with social agency procedures and practices than has occurred in the past. Some officials that were interviewed were pointedly questioning the historical ethos that extracating children from their families reliably addresses their problems. In this way, social intervention to remove children from their homes is under reexamination for its being, in some cases, unduly intrusive and exacerbating the difficulties of children and their families, rather than serving the original and opposite objective. Out-of-state placement, then, may serve as an example of the extreme in this scenario where restrictiveness, at least by virtue of distance from home, is maximized.

In addition to questioning the effectiveness of out-of-home care pursuant to public agency purposes, some officials are concurrently questioning the efficiency of the practice. When children and their families can be helped as an ongoing unit, it was explained, public funds need not be used to purchase a replication in foster care of many of the things the family already offers. Indeed, for many less-serious cases, problems observed in children were said to be inexorably linked to the family, and the family may be seen as an existing and optimal therapeutic setting.

These strategies indirectly relate to out-of-state placement. One of the objectives of diverting less-troubled children from out-of-home care is to change the type of children in accessible public and private child care settings. It was observed that more-troubled youth frequently leave their communities for more intensive child care services because local child care resources are utilized by some children who might be best treated in their homes. The need for public officials to seek services outside of their communities for some cases of greater need might then be reduced by shifting children of lesser need away from local residential resources back to their natural homes.

As a result of this fundamental questioning of public intervention, officials in several state child welfare agencies were eager to share information about current efforts to change the way out-of-home care is being used. These efforts, some of which are experimental, bear names such as family reunification, temporary foster care, and foster care prevention. They have the common objectives of capitalizing on the strengths of families for their preservation, optimizing the use of accessible residential resources according to their capacity for service, and generally reducing avoidable public expenditures for out-of-home care.

Some level of regulation over out-of-state placements by state governments can be justified. Specific implications of state versus local out-of-state placemnt regulation are manifold. State regulation provides for consistency and equality of practice across local jurisdictions. On the other hand, some level of local autonomy also has its benefits. Locally administered policies that were discovered ranged from a complete prohibition of the practice, to careful regulation, to a complete absence of policy to uniformly protect children placed at great distances, depending at least in part on the particular circumstances encountered at the community level.

State regulation also has the advantage of providing the potential for a centralized information base about children placed out of state and about the settings providing such care. Centralized data of this type provides global planning information to help guide resource development and in-state referral to placement resources that may be unfamiliar to local placing officials. The particular merits of out-of-state facilities may also be made available to local officials who are considering such a placement.

State regulation also reduces duplication of regulatory structures across local jurisdictions and provides clearer lines of authority and accountability for placements. Further, comparability of standards are applied for children placed from different areas of the state, and state agencies can be powerful official bargaining agencies for children and local agencies should difficulties arise.

It comes as little surprise, then, that out-of-state placements are generally better screened, monitored, and otherwise regulated in state-administered systems than those under local governments. Transgressions are less frequent, centralized approval and tracking are better implemented, and compacts are more consistently utilized for the protection of children. Rarely in states with locally administered systems is there a central point of case review and placement recording for all children sent out of state.

Increased state regulatory actions also result in certain problems. The flexibility afforded to local agencies is lessened; however, that flexibility is sometimes important for responding to unique or peculiar situations. In addition, greater state regulatory controls often result in bureaucratic cumbrances which slow down the placement process in a way which can be detrimental to the child. Obviously a balanced approach is needed, allowing for state government oversite and some measure of local autonomy.

The development of regulatory policy should include investigation and approval of out-of-state settings, systematic case review, thorough compact implementation, and incentives and sanctions to assure policy implementation.

Centralized case review occurs prior to placement most frequently in state-operated systems. Case management decisions are reviewed to assure that the proposed out-of-state placement is based on substantiated needs which cannot be answered by in-state services. This is likely the most rigorous and least used form of out-of-state placement regulation, and it was always found to operate concurrent with regulation of receiving settings.

Case review provides the strongest single assurance that children, because of their problems, are not inappropriately placed out of state. When linked with the previously described notion of global planning information, case review may actually accomplish more appropriate placement closer to home in a setting unfamiliar to local placing officials. Case review also assures consistent centralized monitoring of the types of children that are being placed out of state, thereby targeting gaps in in-state resources.

Regulation of receiving settings focuses primarily upon the approval of child care and treatment facilities. This approach is usually linked to a facility's eligibility to receive funding from the sending state and, therefore, usually excludes placements not requiring considerable public expense. State agencies may approve facilities individually, as special service needs arise, or as a group of programs eligible to receive out-of-state placements. On-site approval, as opposed to approval through correspondence and verbal reports, appear to be on the increase since heightened awareness about out-of-state placement has taken place.

Facility approval is one of the most direct ways a state has for assuring equal treatment for children placed outside of their state of residence. Although states cannot formally enforce their child care licensing requirement outside of their boundries, they can require that out-of-state facilities receiving its residents be licensed in their own state. This approach does not necessarily make the same guarantees for children placed out of state as those placed in state, but by relying upon the judgment of regulatory officials in the receiving state, it provides some basic assurances for the quality of care they will receive. Further protections are aided by imposing specific and additional program requirements on the out-of-state facility for approval and the requirement of on-site inspections of accreditation by an appropriate professional body.

All of these practices help identify quality programs for youth in other states and help to ensure that the exceptional measure of placing children out of state will be justified by substantial benefits to the children involved.

There is an issue between individual case review and the investigation and approval of receiving facilities that remains unaddressed by many regulatory schemes, and this is the matching of diagnosed children with approved programs for appropriate care and treatment. Being overclassified or underclassified is the phenomenon of being placed in a program that is either too intense or insufficient in service for the individual's need. This was discovered in several states, including those which individually approve children for out-of-state placement and which inspect receiving facilities for program components. These two centralized forms of regulation usually exist independently, focusing on children and programs, but infrequently on the match between needs and services. New York was the only state visited which is developing a systematic check on the correspondence between the needs of a child and program components.

Compacts are the most uniformly applied policy controlling the movement of children across state lines, and they may or may not be implemented in conjunction with other existing regulatory policies. They do, however, consistently perform important tasks both with respect to children and out-of-state settings receiving them. Case records are very frequently routed to and through compact offices, where some checks are made as to the appropriateness of out-of-state placement to particular receiving facilities. Compacts are frequently the channel for transmitting assurances to the placing agency that the receiving setting meets approval criteria, most notably, licensure in their own state. Compacts are also the mechanism whereby investigations of the adequacy of home-like receiving settings are carried out. These settings are usually prospective foster homes or homes of relatives.

Compacts are unique, however, among the various regulatory policies that states adopt because they provide special legal protections to children placed out of state. Having been adopted by state legislatures in comparable form, they uniformly and legally extend the sending agency's ultimate responsibility for the well-being of children into the receiving state. They also establish lawful mechanisms for the return of children to their state of residence if and when the need arises.

Compacts and their thorough implementation offer great promise to party states wishing to better regulate the placement of children into other states. Most states belong to them; their policy is quite uniform across states; they have their basis in state law; and they provide existing mechanisms for the implementation of their child protection policies, information acquisition and storage, and communication with other states.

Major reform in out-of-state placement policy and practice which has taken place in some states has not necessarily been associated with complete compact compliance. Because these reforms relate primarily to out-of-state placements in institutional settings, other compact-applicable placements to less restrictive settings do not necessarily receive the full involvement of compacts afforded to the more tightly controlled placements. The protections provided by compacts, however, are not greatly affected by the type of setting to which children are placed in other states, and it would seem justifiable that they be extended to children without regard to the restrictiveness of the out-of-state settings ultimately receiving them. This would imply that children placed out of state for adoption, with relatives, or with foster families be afforded the same benefits of compact involvement as those placed in residential treatment and child care facilities.

Methods to implement out-of-state placement policy usually exist as sanctions against noncompliance. These sanctions are usually weak, involving the issuance of policy memoranda and verbal reprimands. Although the withdrawal of funding for placement was often described as an available sanction, it was never described to have been used. Clearly, the best interests of children may mediate against this remedy. However, where locally administered agencies share costs with a state agency, such an action could ostensibly force the local agency to completely bear placement costs. Nonetheless, the functions of out-of-state placement regulation and funding are generally independent of one another, and administrative reprimands prevail as the sanction of choice. Incentives to use in-state programs do exist in some education systems, though they do not specifically reference the out-of-state issue. Some state education agencies share less of the cost of special programming with local agencies for children placed in the nonpublic settings as opposed to those receiving public services. To the extent that out-of-state education placements are almost invariably to private sector institutions, this practice mediates against sending children out of state. Similar practices were not discovered in any of the other agencies which were studied.

Probably the most effective incentive to place children in their state of residence is the development of a continuum of responsive services for children. Public officials do not place children out of state to get rid of them. In most cases, placing a child out of state is a statement of concern for appropriate care. Many concerned officials would be able to realize the often stated objective of keeping children close to home if sufficient and appropriate resources were at their disposal to meet children's needs.

When out-of-state placement is clearly warranted, compact utilization could be improved through a variety of measures. There was frequently described to be a disincentive to compact utilization because of perceived time delays in placement processing. In addition, compacts were described in many of the case study states to be understaffed, unfamiliar to agencies under their purview, and without sufficient sanctions to bring compliance. Where staffing levels assure speedy processing, ongoing training programs are offered to placing agencies, and the compact occupies a position of authority in the host agency, utilization was observed to be much more consistent.

Interagency cooperation can lead to improved out-of-state placement policy-making and more efficient practices. It might be argued that organizing public youth service agencies along the lines of problems exhibited by children fosters specialization, expertise, and focused attention being applied to those specific problems. However, with regard to out-of-state placement, such an independent and discrete organizational functioning is inefficient and fragmented. It fosters multiple facility approval programs and inconsistent monitoring policies. The same out-of-state provider may be subject to multiple and unequal approval standards. Children placed in the same program in another state by different sending agencies may receive unequal attention from placing agencies in the form of monitoring practices that vary in frequency and rigor.

It is a finding of the study that children with very similar problems are often placed out of state by different agencies in the same state, depending upon their point of entry into the public child-serving system. These children then receive the benefit of different assurances as to quality of care, case planning, and expediency of return to home. Consolidated placement and monitoring strategies, interagency coordinating bodies, and interagency placement committees serve to remove multiplicity of facility approval and to unify placement decisionmaking and monitoring efforts. Interagency efforts are at the center of movements to improve out-of-state placement practices in public children and youth service agencies. Noteworthy are the interagency council in New York working to improve services to New York children in and out of the state and an interagency-interstate project undertaken in New Jersey to establish core child care standards in 14 participating states.

Out-of-state placement policy reflects an emphasis on regulating institutional care. Institutional placements were of greatest concern and the focus of the most attention among public officials. Regulatory reform and policy outside of the prescriptions of compacts frequently focus on placements in facilities rather than those with foster families, relatives, or adoptive homes. Indeed, where compact use is pervasive for institutional placements in states showing concern over the out-of-state placement of children, it may not be so for home-like placements. Most states' regulatory efforts address institutional placements, and many of the issues and conclusions in this report relate to this type of placement.

There are several reasons for the greater regulatory attention paid to institutional placements, a major one being cost. Out-of-state placement for intensive residential treatment can be very expensive, especially if it is widely used by state and local agencies. These costs have been the primary target of substantial shifts in out-of-state placement policy in some states.

Greater regulatory attention is also paid to out-of-state institutional care than home-like care because of the higher levels of restrictiveness for children. With concern for providing least restrictive care widespread in the child care system, greater assurances are desired when a child is to be placed in a setting both restrictive in environment as well as in association with family and friends. Though also restrictive in terms of association, out-of-state placements with relatives in many ways will replicate and may often be more desirable than the natural home.

Greater levels of need among children also brings closer scrutiny by regulatory officials. Where intensive services are required for highly disturbed or handicapped youth, the liabilities of inadequate or incompetent treatment may be greater. Generally, the higher the level of need, the more professionalization required for treatment and the grater regulation by placing officials.

Greater regulatory control for institutional placements may, in some ways, be justified by the greater costs, restrictiveness, and risk for children they usually involve. However, notwithstanding special factors associated with out-of-state institutional care, the special problems and risks present for any children and agencies involved in the practice would seem to warrant basic and uniformly applied protections. These protections should at least include applicable compact involvement, thorough investigation of the receiving setting, maintenance of the jurisdiction of placing authorities, rigorous monitoring of the placement, and a clear delineation of responsibility for supervision in the receiving state.

There are liabilities for children when public agencies adopt overly strict policies in relation to out-of-state placements. The values of proximity to home versus quality of care invariably conflict in decisions surrounding out-of-state placement. They are difficult interests to balance, and an individual decision must be made for each child. These interests are elements of the pervasive "least restrictive" ideal, a concept which placing officials struggle daily to define.

Long-term out-of-state placement into a quality program may least restrict handicapped children's realization of their potential to be independent and enjoy life. However, such placements may be most restrictive to the successful development of relationships with loved ones. Similarly, placements at a great distance to live with a relative may provide a new environment, and a new start, for a delinquent or unruly child, but it also constitutes estrangement for the wholesome aspects of the native environment.

In some cases it may not be clear to what extent removal from familiar surroundings and relationships may ameliorate emotional disturbance or cause a setback in progress toward successful coping. To date, there are no reliable predictors which indicate clear benefit of removal at some distance to a therapeutic environment over the concurrent losses that may be experienced. Quality assurance of the receiving settings and measures of individual needs attempt to ensure personal gains in out-of-state placement, but public policies do not similarly address the possible deficits that may be incurred. Expansion of parental visiting, which is provided by very few public systems, has been suggested by some concerned individuals. This is the greatest compensation that was found to be provided for removal from home at great distances for extended periods of time. The performance of public agencies in achieving permanence for children suggests that there is much to be done in this area.

It is important to stress that the Academy generally found public agencies changing the way they deal with out-of-state placements. In many areas, the practice has been prohibited or curtailed. Concern was expressed in states where great increases in regulation had occurred about the quality of care that children were receiving now that there were fewer placed out of state. It was reported that although many of these children are now closer to home, they are also inappropriately placed because the states could not provide care comparable to the out-of-state program. It is here that the child care system must turn to the aggressive development of responsive and permanency-oriented residential care and treatment. In areas where reductions in the practice have not occurred, with some exceptions, improvements have been made to better regulate continuing out-of-state placements.

Expansion of the interagency efforts to provide appropriate residential services close to home which have been described here would accomplish several things. Those youth with similar problems but served by different agencies would have greater assurance of equal care and treatment. Greater efficiency would be realized by unifying those functions which are now independently performed by each agency. Finally, those children and youth genuinely needing placement out of their state of residence would be more carefully scrutinized; would have the benefit of exposure to all of the resources of the state; and would be less likely to be lost or forgotten by a single autonomous and possibly overwhelmed agency.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTORY REMARKS

Over a three-year period, the Academy for Contemporary Problems has been involved in research about the out-of-state placement of children. The research was systematic in its approach, national in scope, and focused on the policies and practices of all public agencies responsible for child welfare, education, juvenile justice, mental health, and mental retardation services. Clearly, certain questions and issues associated with the practice have not been addressed. For instance, the Academy did not set out to discover whether out-of-state placements are inherently good or bad. However, the work which is summarized in this final chapter should significantly contribute to a more reliable and comprehensive understanding about the practice than was previously possible.

There were several different but interrelated research tasks undertaken in this study. The major findings are set forth in the following discussion. In addition, an in-depth examination and analysis of these findings has led to the identification of several important considerations for policy development and change. This final chapter also outlines a series of recommendations which command consideration by public officials responsible for establishing policies to govern the out-of-state placement of children.

It should first be understood that the placement of children in out-of-state residential care has been practiced by American youth-serving organizations for well over a century. However, strongly held divergent views about the wisdom and legality of the practice have also persisted over an extensive period of time. Contemporary criticism about the out-of-state placement of children has typically involved pronouncements that children are too often placed in substandard and abusive facilities or foster homes, and then abandoned and forgotten by the placing agency. Further opposition to the practice focuses on the constraints such placements have on effective case monitoring and planning, fiscal accountability, and family participation in the child's treatment. In contrast, the out-of-state placement of children is viewed by many authorities as a frequently necessary means to match a child's needs for care with the best services available. Those who favor the practice argue that comparable services or concerned and capable relatives are simply not available for the placement of every child in facilities or foster homes within his or her state of residence.

Still other important factors have influenced national support and a congressional mandate for conducting a study on out-of-state placement policies and practices. A very significant factor was the rather widespread acknowledgment that there was a dearth of available information about the reasons for and the incidence of such placements. Moreover, it was suspected that a sizable but unknown number of children were being sent to placements which were not arranged through an interstate compact, even though compacts offer important legal safeguards for all parties involved in the placement process. Widespread interest existed in measuring the extent to which interstate compacts were utilized for arranging out-of-state placements, and the reasons associated with a lack of compact use.

In the midst of strong public concern, policy debates among professionals in the fields, and considerable media attention to the practice, the Academy's research on the out-of-state placement of children began in 1977. In conjunction with the Council of State Governments, a preliminary study was conducted to identify the key public policy questions, legal parameters, and issues, and to determine the accessibility, retrievability, and reliability of information pertaining to the practice. Case studies and visits with residential facility administrators in Illinois, North Carolina, and Texas helped to gain an appreciation of the real magnitude of out-of-state placements as well as the frustrations connected with the collection of data. This early work greatly assisted the development of the research design employed in the Academy's national study of out-of-state placement policies and practices in 1978.

The research design consisted of the following five major phases of work:

1. A review and analysis of the law and literature relating to the out-of-state placement of children.

2. A survey of every state and local government agency responsible for child welfare, education, juvenile justice, mental health, and mental retardation services.

3. A case study (i.e., in-depth field investigations) of the out-of-state placement policies and practices in Alaska, California, Louisiana, Michigan, New Jersey, New York, and Virginia.

4. An examination of the interstate compacts for the placement and the transfer of children, including their statutory basis and administrative operations.

5. The preparation of eight public policy essays by national experts familiar with the major issues associated with the out-of-state placement of children.

A SUMMARY OF THE MAJOR FINDINGS

It should be pointed out again that the findings summarized below are drawn from information reported not only in this particular publication, but also from the results explored in two companion reports. These other reports are mentioned in the prefatory pages to this publication, and the reader is strongly encouraged to review them for a fuller appreciation of the following summary remarks.

The Policy Essays

As an overview, consideration will first be given to the eight public policy essays prepared in response to key issues pertaining to the out-of-state placement of children. When read together, the essays offer a forum which gives various informative perspectives worth considering for the development and implementation of future policies related to the out-of-state placement of children. The authors are representative of distinguished experience and leadership in the fields of child welfare administration, children's law, child advocacy, interstate compact administration, and child care licensing. Moreover, their articles reflect the strong interest these authors have in improving services to children and a special understanding of the complex and difficult issues associated with the out-of-state placement of children.

The policy issues discussed in the articles are those which command considerable attention in debates about the out-of-state placement of children. The importance and saliency of these issues was further verified in the Academy's national survey of public youth-serving agencies as well as case studies in seven states. The issues addressed in these articles receive considerable attention from officials responsible for affecting out-of-state placement policy and practice.

Out-of-Home Care: The Interstate Placement Experience By MaryLee Allen and Jane Knitzer

This article examines the relationship between the out-of-state placement of children and contemporary thought about services to children in out-of-home care, and exemplary foster care practice. The authors argue that many out-of-state placements are unnecessary and inappropriate. An excellent overview has been developed which is descriptive of how inappropriate out-of-state placements in the field of child welfare are a consequence of the broader problems affecting out-of-home placements. Some of these problems which are highlighted include:

1. Children enter care unnecessarily.

2. Once in care, children are placed inappropriately.

3. Monitoring of care is inadequate.

4. Licensing and other regulatory mechanisms are ineffective.

5. Accountability at the federal level is lacking.

The authors give several important recommendations for reform which include the enactment of statutory provisions requiring placements in least restrictive settings and within reasonable proximity to a child's home. They also call for the strengthening of licensing and monitoring requirements and fiscal reform to increase the level of funding for preventive services, family reunification programs, and adoption services.

Governmental Regulation and Monitoring of the Interstate Placement of Children: Fiscal and Administrative Approaches By Merle E. Springer

This article also focuses upon the child welfare field and argues that out-of-state placements are often inappropriate. The author views the problem as a consequence of inadequate government regulation and monitoring. Six key principles of acceptable child care practices are offered as a philosophical framework for more effective regulation and monitoring of out-of-state placements through administrative and fiscal action. The author's recommendations include some innovative ideas for facility regulation and monitoring, case reviews, and the establishment of fiscal policies and contractual arrangements which would improve out-of-state placement practices.

Serving Emotionally and Behaviorally Disturbed Children through Interstate Placement: An Unwritten Policy By Lenore B. Behar

An insightful analysis of policies which have strongly influenced the placement of emotionally and behaviorally disturbed children in out-of-state residential facilities is developed in this article. The author shows how out-of-state placements within the fields of mental health, mental retardation, and juvenile justice have increased as a consequence of certain federal legislation such as the Education for all Handicapped Children Act of 1975, the Rehabilitation Act, and the Juvenile Justice and Delinquency Prevention Act. The author also believes that out-of-state placements are often inappropriate, and explains how such placements are partly the unintended consequence of these federal acts, as well as the result of:

1. A convoluted network of interstate funding and purchase of care arrangements.

2. Conflicting state policies and planning.

3. A lack of coordination.

The article concludes with a summarization of various fiscal and bureaucratic incentives and disincentives to policy development, and offers a number of prospective state and federal government policy initiatives for consideration.

Individual Rights and the Interstate Placement of Children: From Expediency To Exportation By Marcia Robinson Lowry

The author of this article is also concerned that out-of-state placements are often inappropriate, and describes the bureaucratic action in New York which led to the placement of numerous children in out-of-state facilities. A perspective for reforming out-of-state placement policy which is different from the approaches discussed in the previous articles is outlined. The approach is predicated upon litigation and is based on an analysis of constitutional and case law relevant to the provision of individual rights which, in the author's judgement, may be violated through out-of-state placement policies and practices. Litigation in New York is used as an illustration for the development of this perspective.

Governmental Regulation and Monitoring of the Interstate Placement of Delinquent and Disturbed Children: Executive Approaches By Robert B. Nicholas

As another and final example of how bureaucratic policy and action can result in inappropriate out-of-state placements, this article examines the recent history of a segment of New Jersey's child care system. The author details the major events and circumstances which prompted officials in New Jersey to inappropriately place large numbers of children out of state. In contrast to the responses suggested by other authors for addressing this problem, an executive course of action is described which was actually taken by New Jersey's governor to abate the state's problem with out-of-state placements.

The primary components of this plan include:

1. The development of additional residential facilities within New Jersey.
2. The implementation of a central review of all out-of-state placements.
3. Suspension of all referrals to out-of-state facilities beyong 50 miles of the state line.
4. The development of a case review system for all children in placement.

Child Care Licensing and Interstate Child Placements: An Essay on Public Policy Planning

By Norris E. Class

The author does not address remedies for reducing inappropriate placements but, instead, focuses upon measures which can be taken to increase the quality of care received by children in out-of-state facilities. Facility licensure is suggested as a means to improve regulatory safeguards for children in out-of-state placements. The author undertakes a thorough analysis of the relationship between the evolution of licensing and early out-of-state placement practices. A fairly detailed discussion of contemporary child care facility licensing which focuses upon administrative operations is included in the article. Finally, the reader is told how child care licensing can act to increase compliance with interstate compact procedures for the placement of children.

Interstate Services for Children and Interstate Compacts: An Analysis of Approaches for Effecting Change

By Bruce Gross and Mitchell Wendell

This article offers important considerations for improving the administration of and compliance with interstate compacts for the placement of children. The authors suggest that a lack of compact use is a consequence of a number of factors, including issues of interpretation, inadequate enforcement procedures, and the lack of compact applicability for certain types of placements. The adequacy of each of the three interstate compacts for the placement of children is candidly discussed and several options are explored for considering improvements in these compacts. These options include:

1. Legislative consolidation of the compacts.
2. Amendments.

3. Enacting a fourth compact.

4. Better utilization of compact administrative regulatory authority.

5. Organizational consolidation of the compacts.

6. More diligent enforcement.

Strengthening the Compacts: Administrative and Bureaucratic Approaches By Jane C. McMonigle

The final article also focuses upon the inadequacies inherent in interstate compacts for the placement of children. The author identifies those administrative and bureaucratic factors which impede the effective administration of interstate compacts for the placement of children. The kinds of problems which are the focus of this article include:

1. A lack of understanding about the out-of-state placement procedure and interstate compact guidelines.

2. Conflicting compact interpretations which develop from ambiguous language in statutory provisions.

3. Inability to enforce compliance with compact procedures.

The author proceeds to provide an analysis of variations between state organizational structure and administrative patterns related to compact operations, and points out those factors associated with effective compact administration.

An Overview of Out-of-State Placement Policy

The opinions expressed by the authors of the policy essays as well as those of other authorities differ with respect to the level of benevolence which is believed to be shown to children by agencies that place them out of state. This inconsistency is further magnified in the policies under which youth-serving agencies officially operate. As explored in Chapter 3, many state legislatures have enacted long-arm statutes, exportation statutes, interstate compacts, and related legislation which provide executive and judicial agencies the authority, and sometimes fiscal reimbursements, to place children out of state. In contrast, legislatures and executive agencies in other states have explicitly prohibited public agencies from placing children in out-of-state child care facilities. Furthermore, recent litigation testing the legality of out-of-state placements, both on the basis of constitutional principles and state law, has had inconsistent implications for a general policy on out-of-state placement practices.

Policies established in some states to govern out-of-state practices are often in extreme conflict with those in other states. For instance, school districts in Ohio are prohibited from purchasing services in out-of-state facilities but, in Illinois, districts are reimbursed by state government for such expenditures. Sometimes out-of-state placement policy varies among different agencies in the same state. Child welfare agencies in Michigan, for example, have the authority to purchase services from agencies in other states, but the school districts in this state cannot use public funds to purchase private classroom services in other states.

In order to best characterize the trends in out-of-state placement policy which were discovered, summary remarks will be given according to major findings among types of agencies.

Child Welfare Policies

Typically, child welfare agencies are not prohibited from purchasing care for children in out-of-state facilities. The policies in effect to regulate out-of-state placement practices in such agencies varied widely in their scope and substance. Generally, the utilization of an interstate compact (typically the ICPC) was required for the placement of a child in another state. Other regulatory policies pertaining to the out-of-state placement of children by child welfare agencies typically evolve from contemporary casework principles and procedural guidelines. In addition, most social workers are required to obtain supervisory approval of all casework plans. In a few states, the approval process includes executives in the local agency and sometimes in the state department of public welfare, when out-of-state placements are contemplated. State agency executives are invariably involved in the approval of out-of-state placements when state revenue is sought for funding the placements.

Out-of-state placements arranged by child welfare agencies are typically involuntary in nature. As a result, juvenile court policies also affect the out-of-state placement practices of child welfare agencies. In some jurisdictions, judges are directly involved in the placement decision-making process from the onset. In addition, a number of states have enacted legislation requiring periodic judicial reviews of all children in foster care. Such reviews can entail the assessment of the child's progress in placement, the treatment plan, and the effectiveness of the services received by the child.

Overall, the goals of permanency planning and family reunification are receiving increased importance among policies regulating the placement decisions of child welfare agencies. However, the study did not discover a corresponding trend with respect to further policy specifications about the out-of-state placement of children. In fact, parental involvement in placement decisions was not an area of emphasis in most policies.

Significant differences were discovered among the states regarding policy considerations for selecting appropriate placements in other states. In a few states, there were simply little or no specifications promulgated by state government about what constituted an acceptable out-of-state facility. In the majority of states, however, the prospective receiving facility was required to be licensed and sometimes the licensing requirements had to be compatible with those of the sending state. Finally, it should be observed that in a few states, preplacement on-site inspection and periodic return visits were required in order to assess the acceptability of an out-of-state facility.

The remaining aspect of policy to be mentioned involves the funding of placements. Characteristically, when the state child welfare agency funded or reimbursed the expenditures incurred by local agencies for out-of-state placements, state government was, of course, in an excellent position to regulate placement practices. For example, compliance with interstate compacts for arranging out-of-state placements was enforced much more effectively when such a procedure was linked to reimbursement approval. In addition, the expenditure of state revenue for out-of-state placements was also found closely associated with the existence of specific policy requirements about what constituted an acceptable receiving facility. Out-of-state placements involving child welfare agencies were also funded by local and federal revenue sources and, consequently, subject to fiscal policies promulgated at the local and federal levels of government as well. Title XX, SSI, Medicaid, and AFDC funds were all found to help subsidize out-of-state placements.

Education Policies

Unlike the policies under which other types of agencies receive the authority to place children out of state, state education policies tend to more specifically address the out-of-state placement of children. For example, in the state education statutes, it is common to find clear statements of whether such placements can be made, the circumstances under which they can be arranged, and the legal method appropriate to effect the placements. Twenty-eight states had clear statutory provisions authorizing out-of-state placements for educational services. In contrast, three states specifically prohibited education agencies from purchasing care for children in facilities.

For the most part, state education policies which authorize out-of-state placements are largely guided by federal legislation requiring states to provide free and appropriate education to all handicapped children. Specifically, this federal legislation is P.L. 94-142, entitled The Education for All Handicapped Children Act of 1975. State policies established in response to P.L. 94-142 are related to the educational needs of broad categories of children who are variously described as developmentally disabled, educationally handicapped, visually impaired, blind, deaf, exceptional, learning disabled, emotionally disturbed, etc.

Except in Virginia, out-of-state placement policies do not require education agencies to utilize interstate compacts for arranging such placements. However, as mentioned above, education policies do typically establish very specific procedures for out-of-state placements which are broad in scope and detailed in substance. The major components of these policies include:

- Diagnostic information must be produced which confirms that the child is in need of special education services.
- Placements are voluntary in nature and include parental participation in the placement decision.
- Placement decision should correspond to the P.L. 94-142 mandated development, and annual review, of an Individualized Education Plan (IEP) which is developed in conjunction with the local school boards.
- An appropriate program in the child's home school district or surrounding school districts must not be available.
- Out-of-state programs are to be selected from a state listing of "approved schools" eligible to receive children in need of special education. It is important to further understand that these lists are developed through methods ranging from on-site assessments conducted by state education officials to the direct acceptance of a "school" suggested by a child's parents or local officials as long as the "school" is approved by the state in which it is located.

Other important aspects of out-of-state placement education policies relate to fiscal issues. Among the states, there was a clear lack of consistency concerning the kinds of services which could be purchased with state and locally appropriated education revenues. For example, in some states, out-of-state placements were invariably funded with state revenues through a reimbursement procedure. In others, both state and local revenues, or only local revenues, were applied to the purchase of such placements. In either case, the funds can sometimes be applied only to tuition, to tuition as well as room and board, and sometimes to tuition for placements, arranged by other agencies. Regardless of the type of funding arrangement authorized by the various fiscal policies, a fairly detailed and explicit contract was formulated between the school district and the out-of-state facility or school. These contracts generally included specifications for the services to be purchased, architectural and programmatic standards to be adhered to, and the transmission of specific monitoring information to the placing school district.

Juvenile Justice Policies

Most policies under which juvneile courts operate provide a wide range of dispositional options for placement, regardless of the type of adjudication. Typically, the court is given alternatives ranging from home placements to institutional commitments without any geographical limitations. States that have enacted the Uniform Juvenile Courts Act permit juvenile courts fairly wide and detailed authority concerning the out-of-state placement of children. A similar trend was discovered among juvneile probation and state juvenile corrections agencies.

Even though many out-of-state placements involving juvenile justice agencies are involuntary in nature, the fundamental and frequently only policy provision requires that an interstate compact be utilized. However, juvneile court policies exist which permit noncompact-arranged placements when their use would hinder the timely placement of a child. Therefore, policies among juvenile justice agencies, particularly in local government, were found to vary widely and to reflect the judgment of juvenile court judges.

Similar to many child welfare agencies, out-of-state placement policies in the area of juvenile justice reflect contemporary principles of casework and foster care. A somewhat common trend in policy which apparently corresponds to those considerations involves the use of placements, in relatives homes wherever possible, as an alternative to more restrictive residential care. It was also observed that probation agencies generally do not place children in other states without receiving judicial concurrence, although such a requirement was commonly an unofficial aspect of policy. Moreover, the trend in establishing policies requiring periodic judicial reviews of children in foster care was prevalent in juvenile justice and, of course, influences out-of-state placements arranged by agencies of this type.

Mental Health and Mental Retardation Policies

It must initially be understood that the local mental health and mental retardation agencies rarely have direct responsibility for the placement of children. Additionally, these agencies typically do not operate residential programs but, instead, subsidize such services as well as assume a major role in providing nonresidential services on an outpatient or interagency basis. Of course, private agencies involved in the placement of children in other states may receive funds from local mental health or mental retardation boards but, overall, these public agencies rarely have direct responsibility for out-of-state placements. Such placements are overwhelmingly arranged by agencies in the private sector, by the parents of children, and by other public agencies on a referral basis. Consequently, policies which regulate the practice were seldom in existence at the local level.

State agencies responsible for mental health and mental retardation were found to have out-of-state placement policies, but generally such policies addressed only hospital transfers. Specifically, state agencies are subject to policies requiring the use of the mental health compact (ICMH), which is applicable to the placement of a child in another state hospital. It is also important to observe that several mental health compact correspondents expressed a desire to extend the applicability of the ICMH to cover placements in community-based public residential facilities, such as group homes, as well as all privately operated facilities.

Interstate Compacts for the Placement of Children

Throughout the Academy's research on the out-of-state placement of children, considerable attention has been given to exploring the content and administration of the three interstate compacts for the placement of children--The Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health. These compacts provide important legal safeguards to children placed across state lines and promulgate accountability and stadardized procedures for placement decisions and monitoring of the children's adjustment. Moreover, as was just pointed out in the discussion of policy trends, compact utilization is typically a central aspect of state governments' regulatory efforts. The use of compacts by agencies when placing children out of state is an important indication of state government's ability to regulate the practice. Accordingly, Chapter 4 of this report and two of the policy essays mentioned previously specifically examine the interstate compacts. This section will summarize the major findings from the national survey and the seven case studies regarding compact utilization and administration.

First, considering national findings about the use of interstate compacts among local public agencies responsible for child welfare, juvenile justice, mental health, and mental retardation services (findings about education agencies are discussed below), it was determined that almost 32 percent of those agencies which placed children out of state did not use any compact in 1978. A total of 376 local agencies responsible for these services never used a compact to arrange out-of-state placements. Significant variations in compact use was discovered among states and agency types. For instance, in three states (Michigan, North Dakota and Texas) all local placing child welfare agencies utilized a compact while in four other states (Minnesota, Nevada, Pennsylvania and Wisconsin) over 30 percent of the local placing child welfare agencies reported no compact utilization in their placement arrangements. Among local juvenile justice agencies, the percentage of agencies without any compact utilization for their out-of-state placements ranged from zero in one state (Washington), to over 70 percent in six states (Indiana, Kentucky, Virginia, West Virginia, Wisconsin, and Wyoming). The suggested difference in compact utilization among agency types varied greatly across the country. Only 18.6 percent of all local child welfare agencies failed to use a compact, but 42 percent of the local juvenile justice agencies and 72 percent of the mental health and mental retardation agencies reported no compact use.

The next level of inquiry to emerge from these dramatic findings concerns a desire to know how many children were placed out of state without a compact in 1978. Such information includes an analysis of the number of children placed out of state by these agencies which did not use a compact and investigates the likelihood that those agencies reporting compact use did not neccessarily arrange all their out-of-state placements through an interstate compact. The study found that 2,010 children were reported placed out of state without a compact in 1978 by local agencies responsible for child welfare, juvenile justice, and mental health and mental retardation services. Among those agencies reporting compact information, this number represents 21.8 percent of the children placed by local child welfare agencies, 51 percent of those placed by local juvenile justice agencies, and 66 percent of the children placed by local agencies responsible for mental health and mental retardation services. Clearly, a relatively significant proportion of the children placed out of state in 1978 by local public agencies were not compact-arranged.

Findings about the utilization of the interstate compacts by local agencies responsible for educational services should be considered separately for an important reason--there is no compact which is applicable to placements in private psychiatric facilities or those facilities which are deemed primarily educational in nature. Such a lack of applicability is germane to an examination of compact use by education agencies. Even though these agencies may (and often do, as will be discussed later) place children in the same facilities used by child welfare or juvenile justice agenices, only one state (and not until 1980) has extended requirements for compact utilization to placements involving agencies responsible for educational services. It is generally assumed that such agencies rarely place children out of state, and when they do the placements are believed to be to private psychiatric hospitals or facilities primarily educational in nature. Consequently, one should not be surprised to learn that only 17 out of 718 local education agencies reported the utilization of an interstate compact in 1978 for out-of-state placements they arranged.

Other important conclusion can be reached through a consideration of the utilization of interstate compacts for placements initiated by state agencies.

Compared to states with services under the auspices of local government, those states with state systems were discovered to arrange out-of-state placements through compacts to a much greater extent. For instance, state-operated child welfare and juvenile justice agencies in Florida reported that all their placements were compact-arranged in 1978. Several other states had similar patterns of compact use. In the area of child welfare, it was observed that 13 out of 14 states without local agencies (and reporting compact use) arranged 100 percent of their placements through a compact.

A fairly similar pattern was discovered in states with no local juvenile justice agencies. Florida, Hawaii, Massachusetts, North Dakota, Rhode Island, South Carolina, South Dakota, and Utah have state juvenile justice system. All out-of-state placements arranged by these agencies in those eight states were compact-arranged. In contrast, only 14 percent of the placements arranged by state juvenile justice agencies in Alaska were compact-arranged. Other states reporting noncompact-arranged placements from state juvenile justice systems include Connecticut, Delaware, and North Carolina.

A fuller understanding of these national trends regarding the utilization of interstate compacts is acquired through a review of certain conclusions reached from case studies in seven states. Many of the issues discussed in the course of these field investigations are also examined in the two policy essays relating to interstate compacts. The factors listed below should be considered as representative of national trends which offer reasonable explanations for the lack of interstate compact utilization reported among state and, particularly, local agencies in 1978.

The following factors have been organized into two categories. The first category relates to administrative issues associated with a lack of compact utilization as perceived by state officials, especially compact administrators. The second category includes those factors reported by local officials which are perceived by them as obstacles to compact use.

Administrative Factors

- Offices charged with responsibility to administer interstate compacts were typically characterized as understaffed and lacking resources. Although such complaints are common in state government, they seemed particularly pertinent to compact offices. Consequently, it was argued that work loads were extreme, resulting in a limited capability to quickly complete compact forms, to monitor compliance with compact procedures, and to provide training sessions on compact use.

- Compact operations generally have a marginal relationship to other departmental functions. Therefore, compact officials are given few opportunities to influence the development of state policies and practices which would act to support compliance with compact utilization.

- There is a decided inability to monitor and enforce compact utilization. This characteristic is, of course, linked to the factors mentioned above, but it is also associated with the compact provisions themselves. Compact language is somewhat ambiguous and subject to different interpretations. This situation is further evidenced in the reported lack of legal support given to compact operations. Responsive legal support was viewed as necessary to resolve conflicting opinions on compact law as well as a means to enforce sanctions for a lack of compact use. Additionally, there was a general sentiment against pursuing a legal course of action to prosecute violators of compact law. Typically, compact administrators choose remedial measures such as verbal and written solicitations for cooperation as responses to known cases of compact violations. Compact administrators generally learn about noncompact-arranged placements from their counterparts in other states and respond by processing the placements through the compact post factum.

- Compact offices operate with poorly developed information management systems. Records maintained in compact offices are generally not linked to other departmental information systems and tend not to be automated. As a result, the timely retrieval of information is very difficult and information concerning children placed out of state is not maintained with other departmental information sources used for program planning and related statisical purposes.

  Additionally, compact records are rarely kept up to date. For example, the compact office may compile records concerning the placement investigation and approval, but not confirm whether the child was actually placed. Moreover, an unknown number of children return from out-of-state placements, but the movement oftentimes is not known or not recorded by compact officials.

Obstacles to Compact Use

- The most predominately mentioned obstacle to compact utilization pertained to excessive red tape and time delays associated with compact procedures. Numerous local officials complained about the amount of paperwork and time involved in compact use. Consequently, these officials sometimes justify a lack of compact use because they believe the process interferes with the best interests of children. In other words, it is decided to place a child without a compact rather than delay the placement action which could harmfully affect the child.

- Many local placing agenices have a poor understanding of compact benefits and procedures which result in a lack of use. The ambiguity attributed to compact provisions described by compact officials themselves is greatly magnified among local officals. There is a lack of knowledge about compact law and the applicability of a compact to various types of children and categories of prospective receiving facilities.

- It is generally believed that a lack of compact use will not result in the application of any penalties. Quite simply, some local officials were not concerned with policies requiring compact use because they thought no negative sanctions would be applied, and such action was justified on grounds that the children in question were not negatively affected.

- Compact use was sometimes viewed as a hinderance to acceptable standards of casework. This perspective was taken by officials who believed that compact personnel simply complicated and delayed the transmission of reports about the suitability of prospective placements in another state.

Compact officials were viewed by these persons as unnecessary intermediaries who inhibited a more effective communication between the sending and receiving officials.

Additionally, it was argued that compact use leads to a reduction in the level of control that a caseworker can exercise over the treatment and care of a child.

Other Major Findings about Out-of-State Placement Practices

This section summarizes the remaining major findings from the national survey and the case studies concerning out-of-state placement practices in 1978. Attention is specifically focused on highlighting important research results about the incidence of out-of-state placements, the characeristics of the children placed, the types of settings used for placements, the states of destination, monitoring practices for out-of-state placements, and the availability and accessibility of information in state government.

The Incidence of Out-of-State Placements

In total, 14,953 children were reported placed out of state in 1978 by state and local agencies. However, the number of public agencies involved in practice is not nearly as prevalent as this number suggests. About 60 percent of the out-of-state placements reported were arranged by agencies in local government. Probably one of most revealing findings in the study was that only a relatively small number of local agencies actually placed these children out of state. The survey of 19,511 local agencies found that 2,057, or about ten percent, reported involvement with out-of-state placements. No more than 36 percent of the agencies of a single service type arrange such placements. Furthermore, there were 413 local agencies whose combined placements equaled 67 percent of the 8,992 children reported placed out of state in 1978 by all local agencies.

Placements arranged by state and local child welfare agencies accounted for almost 40 percent of the total number reported. Juvenile justice agencies arranged the next highest number of out-of-state placements, followed by placements involving education agencies and then mental health and mental retardation agencies. In fact, agencies responsible for mental health and mental retardation services only arranged a total of 439 out-of-state placements in 1978, which was a considerably smaller number than those reported by other types of agencies.

Children were placed out of state from every state and the District of Columbia during the reporting year. The combined number of such placements reported varied significantly, with a range of 11 in Vermont to 946 in Maryland. The average number of placements arranged among the 50 states and the District of Columbia was 293, or about 40 children per 100,000 persons eight to 17 years of age. Those states ranked with higher per capita rates of out-of-state placements included the District of Columbia, Nevada, Oklahoma, and Idaho. Although the rates in the District of Columbia is contradictory, more urbanized and highly populated states tended to have lower per capita rates of placement.

Given this background, it is easy to see why an important mission of this research was to promote a better understanding of the factors which act to explain the incidence of out-of-state placements. Overall, the most common reasons given for arranging such placements, as reported by a sample of local agencies, was because officials wanted the child to live with relatives. In fact, placements with relatives in other states may often serve as alternatives to in-state public institutionalization to which the children had failed to adapt. It was also frequently reported that out-of-state placements were arranged because of lack of comparable in-state services. The second (after relatives' homes) most common category of residential setting used for out-of-state placements was residential treatment and child care facilities. These findings lend additional credibility to the arguments developed in one of the policy essays. Specifically, the deinstitutionalization policies in juvenile corrections, mental health, and mental retardation, as well as P.L 94-142, have influenced the need for a well-developed network of services at the community level as alternatives to traditional modes of intervention. However, a number of communities apparently do not have sufficient or adequate community-based services and, as a result, placements in other states are arranged.

The majority of local agencies did not arrange any out-of-state placements in 1978. A lack of funds or statutory authority to arrange such placements or both, explains only a small amount of an agency's lack of involvement in the practice. Clearly, the most common reason given for not arranging any out-of-state placements was that sufficient services were available. This result is certainly a very positive indication of the success of state and local service development and planning efforts. However, two other factors are believed to contribute to this fairly common perception about the sufficiency of in-state services. First, agencies operate with differing diagnostic capabilities and guidelines. Children with similar service needs may simply be diagnosed differently by various agencies, which affects the implications reached about an appropriate type of placement. Second, agency philosophies about out-of-state placements vary widely. Some agency administrators disliked such placements and indicated that sufficient in-state services were available. These same officials acknowledged that in-state placements were satisfactory, but they did not necessarily provide as good or better services as would be available in out-of-state programs. Additionally, out-of-state placements were not arranged because such placements prevented family involvement in the child's treatment plan.

The Characteristics of Children Placed Out of State

A variety of general conditions which are descriptive of different behavioral, physical, and legal statuses of children served by local agencies were constructed in order to characterize the type of child placed out of state. The characteristic which was most frequently reported as descriptive of the children placed in other states was mentally ill or emotionally disturbed. However, every other condition offered for description was also mentioned. In fact, a comparsion across agency types determined few differences in the characteristics of the children placed by agencies responsible for different services. Other characteristics which were more commonly typical of the children placed out of state included unruly or disruptive behavior, juvenile delinquency, in need of special education, and battered, abandoned, or neglected.

The important implication of these findings is that out-of-state placements were selected by agencies as a response to a wide range of youth problems. Some children, and probably the majority, had severe and unusual treatment needs. In contrast, a number of children who are likely to have been placed with relatives or foster homes were characterized with conditions which were not suggestive of serious problems and the need for specialized services available in only a few facilities in the country.

The Types of Settings Used for Placement

Working with the knowledge about the characteristics of the children who were placed out of state, a strong interest emerges to learn about the types of settings used for placement. An analysis of information supplied by both state and local agencies found that the majority of agencies most frequently used either residential treatment and child care facilities or the homes of relatives for out-of-state placements. This pattern is consistent with other findings and further supports the implication that the type of service arranged for out-of-state placements approaches both poles in the spectrum of residential care. The emotionally disturbed or mentally ill children were likely to have been placed in relatively expensive, specialized facilities with structured environments. However, a sizable group of children with a wide range of characteristics are likely to have been placed in the homes of relatives involving little or no professional intervention.

These observations suggest two other trends. First, out-of-state placements do not necessarily conflict with child care treatment principles supportive of the family and least restrictive environments. Certainly the placement of children, expecially those who have been battered, abandoned, or neglected, in the homes of relatives is consistent with the extended family concept and certainly is not restrictive in a programmatic or architectural sense. Is not a placement with a suitable relative who lives in another state more in line with the child's best interests than an in-state placement in an orphanage or home for children?

The second trend suggested by these findings and further supported with information derived from case studies is that deinstitutionalization policies restricting placements in state hospitals and corrections facilities, and the concommitant lack of community-based residential programs have increased the the incidence of placement in out-of-state residential treatment facilities. Additionally, funds available to school districts under P.L. 94-142 have provided resources for specialized diagnostic and treatment services which have acted to support decisions to place a child in special out-of-state facilities.

At this juncture, additional consideration is given to examining the types of residential settings which were used for out-of-state placements arranged by agencies responsible for educational services. Both the national survey and the case studies determined that many education agencies placed children in residential facilities which were often used by other types of agencies. A review of the lists with approved "schools" eligible for out-of-state placements involving education agencies often include the same facilities which receive placements arranged by child welfare and juvenile justice agencies. This pattern brings into question whether those facilities were primarily educational in nature and, therefore, not applicable to an interstate compact. This question is also raised by other information which indicates that child welfare and juvenile justice agencies utilized compacts for placements in facilities which also received noncompact-arranged placements involving education agencies. The previously discussed ambiguity associated with compacts, and the lack of compact administrative efforts to extend compact utilization to education agencies, must account for this situation.

The States of Destination

It should first be pointed out that information concerning the states in which children were placed was typically not easily retrieved from either state or local agencies. In fact, state agencies did not report the states of destination for 56 percent of the out-of-state placements with which they were involved. Similarly, those local agencies which were asked to report such information did not indicate the destinations for 34 percent of the out-of-state placements which they arranged. Although the inability to report the destinations of children placed out of state was sometimes the result of inadequate monitoring and case follow-up practices, such specific data was also not reported because it was maintained on a case-by-case basis and was not readily accessible in an aggregate form.

Predicated upon the information which was made available for analysis, the study found that children were placed in all 50 states, the District of Columbia, and some foreign countries. Those states reported as destinations for relatively greater numbers of out-of-state placements included Pennsylvania, California, Texas, and Florida.

Monitoring Practices for Out-of-State Placements

Special attention should be given to a consideration of the findings reported by local agencies concerning monitoring practices for out-of-state placements. Monitoring practices relate to an interest in protecting the child, overseeing the implementation of the treatment plan, justifying expenditures, and imply an extended responsibility for the placing agency. Certainly, those monitoring practices involving regularly conducted on-site visits would tend to provide the most comprehensive and reliable information.

Although many agencies reported monitoring out-of-state placements by more than one method, the most common type of practice employed consisted of a quarterly request for a written progress report on the child. Very few agencies conducted on-site visits for monitoring purposes and the frequency of such visits was not routinized. Another fairly common form of monitoring was telephone calls, but again the frequency of placing such calls was not routine.

Comparisons across the different types of agencies with respect to monitoring practices revealed very few differences. The slight variations which were discovered involved education agencies. A slightly higher percentage of the school districts reported conducting on-site visits. Furthermore, it was concluded that education agencies tended to conduct monitoring of out-of-state placements on a more routine or regular basis than the other types of agencies.

Availability and Accessibility of Information in State Governments

The Academy's initial involvement in research regarding the out-of-state placement of children focused on the practices of three states in 1977. A major conclusion drawn from that early work was that state officials who were in the best positions to know how many children had been placed out of state typically believed they were aware of practically all the placements. In reality, these officials knew of a relatively small proportion of the children placed across state lines. The national study based on practices in 1978 found a similar trend in most other states.

Generally, state government agencies could report accurate information concerning out-of-state placements which were arranged or funded by state officials, but comparable data pertaining to placements arranged or funded by agencies under the auspices of local government was another matter. The national survey found that, overall, state agencies could report only a relatively small percentage of the placements arranged by local agencies. However, in comparison to other types of state agencies, those responsible for education services reported more reliable and complete information about out-of-state placements involving their local counterparts. This trend is best explained by the existence of fiscal and administrative incentives for reporting within the educational sector. A relatively large number of state education agencies were required to authorize those placements involving school districts, in addition to providing fiscal reimbursement to districts for the costs incurred by such placements. Consequently, school districts tended to involve state departments of education in the placement decision-making process.

Lesser knowledge in state agencies responsible for child welfare, juvenile justice, mental health, and mental retardation services about placements arranged by their counterparts in local government is clearly linked to findings about compact utilization and the relative absence of policies requiring that such information be reported. Therefore, it is understandable that a state juvenile justice agency, relying upon compact use to report information on the number of out-of-state placements arranged by local courts and juvenile probation agencies, would have inaccurate data when 30 percent of those agencies failed to place a child with a compact. Additionally, the lack of state fiscal or other policies serving as incentives for local agencies to inform state government of such placements contributed to the discovered lack of knowledge among state officials.

IMPLICATIONS AND RECOMMENDATIONS FOR POLICY DEVELOPMENT

Several implications for policy development have been identified in the course of conducting this research on the out-of-state placement of children. The reader is encouraged to consider the recommendations developed in the policy essays. In addition, state and local officials interviewed in the case study states offered insightful suggestions for improving the regulation of the practice as well as the administration of interstate compacts. This final section of the report sets forth recommendations for policy development in six major areas which are regarded as the most prudent measures to consider during this period of fiscal retrenchment in human services.

The level of consideration given to the recommendations which follow should be affected by a conscientious appraisal of the level of satisfaction with the state's current policies and practices. Those states which have an interest in better regulating the out-of-state placement of children can particularly benefit through debating the applicability and implications of these recommendations to their child care system. For instance, if states wish to increase compliance with interstate compacts for arranging out-of-state placements, state agency executives are encouraged to examine the third and fourth recommendations. However, if a lack of compact use is deemed acceptable or the incidence of such placements is insignificant, improvements in compact operations may be difficult to justify with competing demands for additional state resources. Perhaps, a better course of action would involve efforts aimed at program development in order to reduce the need for purchasing care in other states. The first recommendation is concerned with program development objectives which can be addressed through simple improvements to child care information systems. Similar judgments are appropriate for considering the remaining three recommendations.

Immediate Action Should Be Taken to Improve Child Care Information Systems

The capability of many state governments to retrieve reliable and useful information on child care case management and out-of-state placements is underdeveloped. Consequently, states have very little ability to assess the impact of child care policies on placement practices. Few states can accurately report information on children in out-of-home care or those in out-of-state placements. Fundamental information necessary for program planning and system monitoring is available in very few states.

Case information maintained in compact offices should be altered to include data elements of relevance to case monitoring and program planning. Additionally, consideration should be given to merging this data with related departmental information systems in adoptions, foster care, and juvenile court statistics. At a minimum, such proposed information systems could alert state officials to program development needs, placement decisionmaking trends, case monitoring implications, and compliance with policy implementation.

Consideration Should Be Directed toward Expansion of Licensing Program Standards As a Major Form of Child Care Regulation and Protection

Clearly, child care licensing already acts as a primary force to regulate services to children. However, encouragement should be given to establishing additional multistate, regional, or national minimum standards of care. Licensing standards vary significantly from state to state, as well as the level of knowledge about acceptable out-of-state facilities with specialized services to meet the needs of children with serious emotional or physical problems. Typically, only education agencies have established lists of approved in-state and out-of-state programs eligible by law to receive children in need of specialized services.

It is recommended that state child welfare, education, juvenile justice, mental health, and mental retardation agencies convene to establish mutually acceptable standards of child care. Additional action should then be taken to apply those standards to facilities in those states in order to establish a listing of acceptable programs for out-of-state placements. Ideally, supportive policies would be implemented in each state requiring public agencies to use only facilities on this list if out-of-state placements are necessary. In addition, it is recommended that licensing standards be supplemented to include provisions prohibiting the admission of children from other states who have not had their placements arranged through an interstate compact.

States Should Resolve the Apparent Ambivalence in Government Concerning the Administration of Interstate Compact

Time after time, a lack of compact use was attributed to two key factors. The first factor involves an interest in avoiding the unacceptable delays in the placement process caused by compact use. The time involved in placing a child out of state is significantly prolonged when a compact is used because of excessive red tape and related bureaucratic encumbrances. The second factor explaining a lack of compact use is linked to the protection of local autonomy and involvement in the placement process. Compact use is generally believed to result in a loss of authority and placement decisionmaking among local sending agencies.

A number of options can be selected to address these problems if states wish to increase compliance with compact utilization. However, the following two recommendations directly imply solutions to the problems associated with the factors mentioned aboved.

1. Increase resources available to interstate compact offices.

   The provision of supplemental personnel and other resources to compact operations would act to increase their responsiveness to the placement process. As a result, sending agencies would be expected to make greater use of interstate compacts for out-of-state placements because the time involved in the placement process would be reduced.

   An increase in resources for compact offices would also improve their ability to provide training on compact procedures, and monitor compliance, and to collect and maintain case management data relevant to program planning.

2. Delegate certain functions of interstate compact offices to the sending agencies.

   If sending agencies were able to directly solicit placement investigations in other states and could independently contact facilities on an approved list, significantly greater numbers of children would most likely receive the protective benefits afforded by compact-arranged placements.

Other benefits are likely to occur with the implementation of this suggestion. For instance, it seems unlikely that compact offices will receive the additional staff and resources which were so frequently mentioned as needed to more effectively carry out their responsibilities. The decentralization of the functions mentioned above would allow compact officials to become more involved in the following kinds of activities which are also of great importance and need:

- Participation in policy development to establish guidelines and incentives for compact utilization.
- Staff development and training related to compact use.
- Statewide case monitoring to enforce compact compliance and procedural appropriateness.
- Overseeing monitoring practices for out-of-state placements.
- Assisting the establishment and implementation of regionally based licensing standards and the establishment of a regional network of approved facilities eligible to receive out-of-state placements.

Issues Concerning the Applicability of Interstate Compacts to Both Prospective Sending Agencies and Receiving Facilities Should Be Resolved

As discussed throughout the report, a significant level of confusion and ambiguity exists about the applicability of specific compacts to different types of placing agencies. Furthermore, the types of placements covered by specific compacts is not always clearly understood or consistently implemented among the states. This situation results in extra demands upon both the sending agency and compact offices in order to resolve issues of ambiguity and to solicit legal and other authoritative opinions for clarification. Therefore, it is recommended that states consider addressing this problem through legislative amendments to compact statutes or the formulation of administrative policy which would require compact use for any type of receiving setting if:

- Placements are court-ordered.
- Placements are involuntary.
- Placements are arranged by any public agency.
- Placements are arranged by public or private agencies

Each of these options can be reformulated to tailor policies which are directly applicable to a state's child care system. The important aspect of these options is their emphasis on the placing agency and the circumstances under which the placement decision is executed. As a result, definitional issues about what constitutes an applicable receiving setting are diminished and actually become moot.

Current Efforts to Provide Legal Safeguards to Children in Out-of-Home Care and Especially Out-of-State Placements Should Continue to Receive National Support

States are encourage to consider enacting legislation and establishing administrative policies to require the implementation of foster care review systems with oversight responsibility focused on the judicial as well as the executive branch of government. Policies mandating a periodic examination of case planning, family reunification goals, and the quality of care received by children in out-of-home care should receive immediate attention among the states. In addition, if children are under court custody, any out-of-state placement should be judicially approved.

Future Research Needs Concerning the Out-of-State Placement of Children Are Minimal

Aside from consideration of support for future longitudinal study to assess trends in the incidence and regulation of out-of-state placements made possible by baseline information reported in state profiles, there is very little need to directly examine this practice any further. Instead, attention should be further directed toward the broader issue of out-of-home care. Broad public policy and research questions emerging from this study on out-of-state placement policy and practice include:

- What federal and state policies act to influence the high incidence of out-of-home care?
- What social policies and services are needed to strengthen the family structure in order to reduce the need for out-of-home care?
- What social policies and legal mechanisms are needed to balance the rights of children with parental rights and are the bases for public intervention?
- What kinds of community-based residential and nonresidential services are effective alternatives to traditional programs in state hospitals and corrections institutions?

- To what extent have states successfully implemented P.L. 94-142?
- What types of services need to be developed to better serve emotionally disturbed and developmentally disabled children?
- What are the relative advantages and disadvantages of administrative versus judicial foster care review systems?
- From a case management perspective, why are children placed in out-of-home care and especially in out-of-state placements?

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